THE DEFENCE OF JOSEPH GERRALD,

ON A

CHARGE OF SEDITION,

BEFORE THE

HIGH COURT OF JUSTICIARY, AT EDINBURGH,

TO WHICH ARE ADDED

PARALLEL PASSAGES

Between the SPEECHES of Lord Chief Juſtice JEFFRIES, in the Caſe of ALGERNON SYDNEY,

AND OF THE

Lord Chief Juſtice CLERK, on the Trial of JOSEPH GERRALD.

CORRECTED BY HIMSELF.

TO WHICH IS PREFIXED

A SKETCH OF HIS CHARACTER,

WRITTEN BY A FRIEND.

"The Furniture of ancient Tyranny is *not* worne to Rags."

See Burke on the Cauſes of the preſent Diſcontents.

LONDON:

Printed for the BENEFIT of his INFANT DAUGHTER,

And Sold by J. RIDGWAY, York-Street, St. James's-Square.

(PRICE 1s. 6d.)

SKETCH OF THE CHARACTER

OF

JOSEPH GERRALD;

Extracted from the Morning Chronicle of May 8, 1795.

THE Britiſh public, and the world, are indebted to you for the manly way in which you have noticed the cataſtrophe that cloſes, for the preſent, the perſecutions of adminiſtration againſt Joſeph Gerrald. Such events, though melancholy, are full of inſtruction; and it would be matter of regret, if, while the individual ſuffers, and the public is injured, we did not at leaſt endeavour to ſecure the compenſation in wiſdom and improvement with which the circumſtance is fraught. I will deſcribe the character of this man, as if he were actually defunct, and pay him the tribute of juſtice and impartiality, to which merit is always ſuppoſed to be entitled upon ſuch occaſions.

Joſeph Gerrald was born in the Weſt Indies, where he inherited a conſiderable eſtate; and his relations were among the moſt wealthy planters of the iſlands in which they reſided. He received a portion of his education in England, at Stanmore in Middleſex, under the care of Samuel Parr, a name which of itſelf ſuggeſts to every informed reader a higher eulogium than I am able to offer. This great and venerable inſtructor of youth was always remarkable for the encouragement he gave, and the friendſhip he entertained, to thoſe pupils whoſe eminent talents enabled them moſt fully to profit by his communications. Several of the firſt men in this country deem it their particular honour to cultivate that intercourſe with Dr. Parr now, which began under his roof in the connection of maſter and ſcholar. But there was none that he more eſteemed, and by whom his affection was more ardently returned, than Joſeph Gerrald. The ſcene of his education alſo introduced Mr. Gerrald to the acquaintance of many illuſtrious perſons, who were his ſchool-fellows. To know Gerrald, if he who knew him were a man of

Rec. June 21, 1899

of ſenſibility and diſcrimination, was always the ſame thing as to admire and love him.

Mr. Gerrald, when he came to the poſſeſſion of his eſtate, entered into habits of diſſipation, and his eſtate melted away under the activity of his extravagance. A part of this period of his life was ſpent in North America, about the cloſe of the conteſt between Great Britain and her colonies. In that ſcene his attention was neceſſarily called to political truth, and the rights of mankind. Other men have been extravagant; but it was peculiar to Mr. Gerrald, if he were extravagant, to be ſcarcely in any degree prevented by that circumſtance from the accumulation of knowledge, and intellectual improvement. His mind graſped various branches of ſcience, and digeſted them all. The beſt ſcholars, the profoundeſt metaphyſicians, and the ableſt profeſſors of politics, and the law of nations, will be the firſt to confeſs the ſoundneſs of his claſſical knowledge, the acuteneſs and extent of his reaſonings, and the accuracy of his information. His eloquence had equally the power to charm and aſtoniſh; and the brilliancy of his imagination was not inferior to the terrors of his invective. With all this, his temper is not leſs entitled to our praiſe. He was placable and generous to an extreme. The magnanimity of his ſpirit, and the purity of his ſenſe of honour, could only be completely underſtood by thoſe who had made them the ſubject of perſonal obſervation. His defence delivered before the Court of Juſticiary at Edinburgh, is a maſter-piece in acuteneſs of reaſoning, purity of compoſition, and dignity of ſentiment. I am aware, Sir, that the various excellence I aſcribe to him would ſeem like a romance, if Mr. Gerrald had been a man unknown to the world. But you, and almoſt every eminent ſcholar and ſtateſman in Britain, knew his merits, and know that I ſay leſs than the truth, becauſe I do not know how to tell the truth in its full extent.

Having finiſhed his education and his travels, he came to England, the country which ſeemed beſt adapted to the diſplay of his talents. Alas, thoſe talents are cruſhed, perhaps for ever, by the flagitious act of men who were incapable of underſtanding them, or underſtood only to hate them!

Perhaps I ſhall be aſked, "Why expreſs ſo much aſtoniſhment "and diſapprobation of a man's being ſent to the ſhores "of New Holland? This is an ordinary event."—No, Sir, this is not an ordinary event. We ſee men bred among the refuſe of ſociety, tranſported by hundreds; and the philanthropiſt will ſee it with regret. But it is yet extraordinary for a man like Gerrald, to be ſubjected to this nefarious treatment; a man, from whoſe various information the wiſeſt might be contented to learn, and whoſe burſt of eloqnence and penetration might charm the moſt refined. At a moment when the

moſt

moſt conſummate might have repaired with profit to learn wiſdom from his lips, he is thruſt to the fartheſt diſtance from civilized ſociety. I ſhould like to ſee the man who would ſay of himſelf, or whoſe friends would ſay for him, " My talents are greater than thoſe of Gerrald."

The barbarous ſtupidity and ignorance of our Miniſters may lead them to regard this as an ordinary event. But it will be remembered againſt them, and will ſtamp their characters to poſterity. It is a new crime that they never committed before; it is a touchſtone to ſhew how far their profligacy and unbluſhing hardneſs of heart can extend.

They have taken care that their proceeding ſhould want no aggravation. They retained Mr. Gerrald in England till after the memorable trial of the Acquitted Felons. They were willing that no man ſhould be ignorant that if he had been tried in England, and by an Engliſh Jury, he would have been acquitted with honour; and they then take advantage of the barbarous ſtate of Scottiſh juriſprudence, to deprive the human ſpecies, probably for ever, of the benefit of this man's talents.

A farther aggravation remains to be mentioned. The jailors, and other reſpectable attendants of the New Compter and Newgate, whiſpered ſometime ſince, that an order had been iſſued for the removal of Mr. Gerrald to Botany Bay. A perſon of conſequence in oppoſition, who was the friend of Mr. Gerrald, ſpoke to Mr. Dundas on the ſubject, I believe on the ſixth of April, willing that he ſhould not be kept in a painful uncertainty. Mr. Dundas's anſwer was, " There is no intention of " ſending Mr. Gerrald at preſent; and, if it depend upon me, " he will not be ſent." Such unneceſſary duplicity and cruelty are almoſt incredible.

Mr. Gerrald, the unfortunate and illuſtrious ſubject of this article, is in the thirty-fifth year of his age.

DEFENCE, &c.

Thurſday, March 13, 1794.

WHEN the Court met, the interlocutor on the relevancy was read over, and the following gentlemen were choſen as Jurors:

David Deuchar, ſeal-engraver, Edinburgh.
Peter Hill, bookſeller, there.
John Bell, bookſeller, there.
James Hunter, merchant, there.
Andrew Miligen, watch-caſe-maker, there.
Sir William Forbes, Bart. banker, there.
Peter Mathie, jeweller, there.
Alexander Gardner, jeweller, there.
William Creech, bookſeller, there.
Thomas Hutchinſon, merchant, there.

Mr. Gerrald. My Lord, I object to Mr. William Creech; I underſtand he has repeatedly declared, in private converſations, that he would condemn any Member of the Britiſh Convention, if he ſhould be called to paſs upon their aſſize; and I wiſh to refer it to his own conſcience, and his oath, whether he has not prejudged the principles upon which I am to be tried.

Lord Henderland. My Lord, the objection is, that he has prejudged the principles upon which Mr. Gerrald is to be tried; that he ſaid he would condemn every member of the Britiſh Convention; it is ſtated in a looſe way; it is not ſtated that he ſaid he would do ſo whether they were guilty or not; I cannot ſee that it is a relevant objection: if he had ſaid, he would condemn them whether they were guilty or not, it would have been a good objection, but at preſent it is too generally laid.

Lord Eſhgrove. If the allegation had been, that Mr. Creech had ſaid he would convict Mr. Gerrald, right or wrong, the objection would be good; but if it was only in common converſation that he had ſuch an opinion of the intentions of the Britiſh Convention, it is not a good objection.

Lord Swinton. I am of the ſame opinion.

Lord Dunſinnan. I perfectly coincide with your Lordſhips.

Lord Abercrombie. I am of the ſame opinion.

Lord Juſtice Clerk. As this objection is ſtated, I hope there is not a gentleman of the jury, or any man in this Court, who has not expreſſed the ſame ſentiment.

Mr. Gerrald. Then my trial would be a matter of form merely; becauſe a juryman, by ſaying out of doors that he would condemn every member of the Britiſh Convention, takes for granted that very principle which remains to be proved. If a juryman had only aſſerted that he would condemn all the diſturbers of the public peace, no doubt he would be well warranted in making that aſſertion; but he ſays, he will condemn them, not becauſe they were diſturbers of the public peace, but becauſe they were members of a convention, the illegality of which yet remains to be eſtabliſhed: ſo that your Lordſhip muſt ſee that ſuch a general declaration operates to the ſame concluſion, that he would condemn a man for that which may turn out to have been legal and conſtitutional.

Mr. Creech. My Lord, I never ſaid ſo; it is impoſſible that I ever could ſay ſuch a thing.

Lord Henderland. I think Mr. Gerrald is very ill adviſed in the way in which he ſtated the objection; becauſe he has, in fact, acknowledged himſelf a member of the convention.

(The objection was repelled.)

John Hutchiſon, merchant, there.
John Sibbald, ſmith, there.
Alexander Niſbet, manufacturer, there.
William Ranken, taylor, there.
Archibald Campbell, brewer, there.

Lord Juſtice Clerk. Do you object to any of theſe gentlemen?

Mr. Gerrald. Yes, my Lord, I object to William Ranken; and the ground of my objection is this, and I can ſuſtain it by both precedent and principle. It conſiſts in this, Mr. Ranken is taylor to the king; and, of courſe, being in the pay of the crown, being occaſionally in the habit of receiving favours from it, he cannot be a fit perſon to paſs upon my aſſize. And, my Lord, I will ſuſtain it by precedent. In the trial of Algernon Sidney, which, I truſt, will never be adduced as a precedent, except to be violated, it is ſtated that "the Colonel excepted to "ſeveral of the jury, to ſome as not being freeholders, and others "as being in the king's ſervice, and receiving wages from his "Majeſty."

" majeſty." And I find, by the act of Parliament which took place immediately after the Revolution for reverſing the attainder of Algernon Sydney, the very firſt cauſes ſtated as a ground of reverſing the attainder, are, " Whereas Algernon Sydney, Eſq. " in the term of St. Michael, in the thirty-fifth year of the reign " of our late ſovereign King Charles II. in the Court of King's " Bench at Weſtminſter, by means of an unlawful return of ju- " rors, and by denial of his lawful challenges," and ſo on. For theſe reaſons the attainder was reverſed.

Lord Henderland. The very ſame objection was ſtated in the caſe of Mr. Muir, and was then repelled.

Lord Juſtice Clerk. If it had been the king himſelf I don't ſee that it could be a valid objection.

(The objection was repelled.)

The Evidence for the Crown having cloſed, when the Solicitor General had finiſhed, Mr. GERRALD roſe and addreſſed the Jury:

Gentlemen of the Jury,

Mr. Solicitor General has told you, with great truth and ſolemnity, that the cauſe of which you are at preſent the judges, is one of the moſt important which ever came before man for the purpoſe of determination.

Gentlemen, if at an early period of my life it had been announced to me, that the taſk of defending the rights and privileges of nine millions of people would have devolved upon me, a ſimple individual, I ſhould certainly, from my youth up, have devoted my whole time, with unremitting application, that I might be enabled to execute ſo ſacred and important a truſt. Unfortunately, though a conſiderable period has intervened between the time of my being ſerved with an indictment and my trial, yet I have been, in great meaſure, diſtracted by various avocations, and my health much impaired by continual ſickneſs. From my duty, however, no earthly conſideration ſhall induce me to ſhrink. I, this day, come forward to advocate a cauſe, than which the ſun never ſhone upon one of more deep and general concernment; and, impreſſed with this awful conſideration, I advance to it with a tremor that ſhakes every fibre of my frame. But whatever be the reſult of this day's deliberation, I ſhall always look back to the part which I have taken, with the conſciouſneſs of a man who has endeavoured well; for, however weak the fleſh may be, the ſpirit is ſtrongly inclined to the ſervice.

Gentlemen, the ſtate-proſecutions which agitated and diſgraced the middle of the laſt century were by no means of the ſame importance with thoſe of the preſent day.

The conteſt between John Hampden and the crown reſted ſolely upon this queſtion; whether the crown or the parliament

ſhould have the power of raiſing the ſupplies? but it was always allowed that the object of theſe ſupplies was the advancement of the general happineſs. The cauſe which you are called to decide upon is not merely a matter of pecuniary conſideration; you are called upon to decide whether man, who is by his nature ſocial and rational, ſhall meet in ſociety for the purpoſe of improving his faculties, and exerciſing thoſe powers of reaſon which the common Father of us all has given us, to enlighten our underſtandings and ennoble our hearts; or, whether by relinquiſhing every thing that is virtuous, every thing that is praiſe-worthy, every thing that is valuable in the condition of our humanity, we ſhall be reduced to a ſituation beneath the beaſts that periſh?

Gentleman, as an Engliſhman, I will not ſay a ſtranger in this country, for, from being members of the ſame community we have the ſame friends and the ſame foes; and the articles of the Union, I believe, ſay, that the natives of both countries are entitled to the ſame privileges—yet as an Engliſhman, I cannot but conſider my ſituation as varying in ſome meaſure from that of a native of this country. In England, had I committed the ſuppoſed crime charged againſt me, the proceſs would have been very different. The preſent legal proceſs too much reſembles thoſe inſtituted in the laſt century, when proſecutions upon proſecutions were inſtituted for the purpoſe of deſtroying the freedom of our country: I ſay, the proceedings of the High Court of Juſticiary too much reſemble the proceedings of the Star Chamber before it was aboliſhed. We have not in this country the advantage which we have in England of the bill being originally found by a grand jury. We have not afterwards the privilege of a petty jury ſelected entirely by the ſheriff; but I underſtand that the aſſize is firſt appointed by the public proſecutor, from which fifteen are afterwards ſelected by the court.

This circumſtance did not, however, deter me (though it was frequently urged amongſt other arguments) from coming down here to take my trial. No; when the ſcourges of the late proſecutions, and the melancholy fate of the proſecuted were held over my head, I was not to be deterred from doing my duty; though by many I was conſidered as devoted a victim as Regulus departing into voluntary exile, or like Curtius plunging into the gulf for the ſalvation of his country.

Gentlemen, informations began in England during the reign of one of our worſt princes, Henry VII. who filled his private coffers by the plunder of his ſubjects. In conformity to this proceſs, I am ſorry to acquaint you, that I was brought before the ſheriff of this county by the operation, not by the regular ſervice of a warrant. When I was taken up I aſked for the warrant, but it was refuſed. My temper, I truſt, is mild and peaceful; though in England had a ſimilar proceſs taken place, the officer might have paid for his irregular conduct with the forfeiture of his life. But that was not my purpoſe; for as truth is my only

object,

object, ſo reaſon is my only weapon. My papers were taken out of my bureau and carried before the ſheriff. Knowing that thoſe papers could contain nothing to criminate me, I claimed them as my property, and ſigned the claim without any heſitation. I am ſhocked, however, to think that ſo groſs a proceeding ſhould take place in any country as a diſcloſure of ſecrets by taking private papers. Since the original ſeizure of my papers, a private letter has been arreſted in its paſſage to me from London, and in an attempt to ſee the contents, has been deſtroyed without its ever reaching me. I demanded what could be the object of this procedure. I was informed that it was for the purpoſe of collecting evidence againſt me. This collection of evidence then, it ſeems, may be made with impunity in Scotland, by as groſs a violation of the laws of the land as certain other collections are made, of which the collectors when taken are afterwards hanged.

Gentlemen, the Solicitor General acknowledged with much candor, that if he could not prove the criminal intention, he could prove nothing. It is upon this grand principle that I reſt my defence; it is neither upon legal chicanery nor legal quibbles; theſe would be unworthy of the cauſe in which I am engaged. If the criminality of the intention alone can conſtitute the offence, either in a legal or moral point of view, I truſt I ſhall be able to make out ſo clear a caſe, notwithſtanding the calumnies which the lying breath of rumour may have caſt upon me, that you yourſelves, diſcarding prejudices which it is poſſible you may have imbibed, will retire from this Court as fully ſatisfied of my innocence as I am myſelf.

Gentlemen, if fugitation is in the eye of the law deemed a preſumption of guilt, appearance by parity of reaſon muſt be deemed a preſumption of innocence. Notwithſtanding the preſſing ſolicitations and ſtrong inducements held out to me by the ſociety who delegated me, and who would have paid my bail, I determined to come down and appear before you. Can there then exiſt a ſtronger proof of the conſciouſneſs of the purity of my own intentions, than my having voluntarily appeared before that tribunal which I might have ſhunned, and from which innocence itſelf has often fled?

Gentlemen, though it does not come immediately before you, I do conceive that my being brought to trial at this particular time is a harſh and rigorous meaſure; and it is rather remarkable that on the laſt Monday, a period which was marked for the firſt day of my trial, and when I appeared here before the Court, our Repreſentatives in Parliament were, in fact, ſitting in judgement upon theſe very judges; nor do I think it would have degraded the dignity of their functions, if they had acted with leſs heat and with more deliberation, and had patiently waited till the reſult of the proceedings of the high court of parliament had been known upon their conduct.

Gentlemen, the hiſtory of Britain furniſhes us with abundant inſtances of the interference of the legiſlature to correct judicial

errors. In the caſe of Hampden, which was a period that muſt be dear and valuable to every Engliſhman, the parliament, by their interference, prevented the robbery of the ſubject by the arbitrary fiat of the crown. It is not fit, I own, that they ſhould interfere where the public is not deeply intereſted; but where it is, they are bound to do ſo in juſtice to their repreſentatives, and they always have done ſo: nay, they have gone further, and where the neceſſity was great, they have even come to a reſolution in point of law, contrary to the judgement of a court of law, and to the opinion of ten out of twelve judges. In caſe the judges violated the law (a circumſtance which in the late caſes is yet to be determined) or where they ſuſpected any undue influence, either in the exertion or the ſupport of the prerogative, by officers of the crown, or *by judges*, they have always interpoſed. Is it poſſible to forget or to controvert either their conduct, or the propriety of it, in the great caſe of ſhip-money, which was firſt brought into queſtion by Mr. Hampden, a private gentleman, who, ſo far from regarding the trumpery, pettyfogging conſideration of damages, declared, that he would not pay it were it but one farthing, if pretended to be demanded of right, and by colour of law: and yet proceeded, according to my Lord Clarendon's own account, with great temper and moderation in that ſuit? His Lordſhip adds, "and all the world knows that never any "cauſe had been debated and argued more ſolemnly before the "judges, who, after long deliberation among themſelves, and "being attended with the records which had been cited on both "ſides, delivered each man his opinion and judgement publicly "in court, and ſo largely, that but two judges argued in a day." Ten of them ſolemnly pronounced their opinion for the right claimed by the crown, and which it had regularly exerciſed for four years immediately preceding: but, as Lord Clarendon obſerves, (Lord Clarendon was a monarchical man, much attached to Charles I.) "*the judgement proved of more credit and advantage* "*to the gentleman condemned than to the king's ſervice*, however, "(adds he) theſe errors in government were not to be imputed "to the court at that time, but to the ſpirit and over activity of "the lawyers of the privy-council, who ſhould more carefully "have preſerved their profeſſion and its profeſſors from being "profaned by thoſe ſervices which have rendered both ſo obnoxious to reproach."

Gentlemen, this circumſtance, I apprehend, is an object very important for your conſideration, and which, I truſt, will have ſome influence in the guidance and direction of your verdict; inaſmuch as you find that in England, in a caſe where ten out of twelve of the judges gave their opinions againſt the defendant, yet, ſtill their ſentence was reverſed at a higher tribunal, that of Parliament. The ſentence was reverſed, and even Clarendon, a monarchical man, who comes down to us under great purity of character, tells you, "that theſe proſecutions were inſtituted and

" carried on by the crown lawyers, who were over-active in the " execution of their duty, and had ſubjected them and the pro- " feſſion as obnoxious to reproach."

Gentlemen, the indictment contains againſt me four charges. I ſhall endeavour briefly (in order that I may take up as little of your time as poſſible) to ſtate theſe charges ſpecifically, and to give as ſpecific anſwers to thoſe charges, as the combined operation of my underſtanding and my conſcience directs me to give.

The firſt charge is of ſo extraordinay a nature, that it was ſome time before I could bring myſelf to ſit down to a ſerious refutation of it; and upon any occaſion not ſo important as the preſent, I ſhould either have combated it with the weapon of ridicule, (of which, even, it is hardly deſerving) or have thrown it behind me with ſilent contempt. I have been charged with making uſe of French terms, though it has been proved, as I ſhall preſently ſhew, that this charge, ridiculous as it is, is alſo fallacious.

Gentlemen, it is a moſt extraordinary thing, that ſuch a charge ſhould be made in a country, againſt a native of that part of the kingdom, I ſpeak not of Scotland, but of England, where all our old law proceedings are in that very language. The writings of the venerable Littleton, whoſe tenures contain the whole doctrine of our law of landed property, upon which my Lord Coke, the great Oracle of Engliſh Law, has written his Commentaries, are in the French language.

Britton, and other writers of as great authority, though of more remote antiquity, and who are deemed the legal patriarchs (as it were) in the hiſtory of juriſprudence, wrote in French; and the king himſelf, even at this period, never gives his aſſent or refuſal to any act of parliament which binds the ſubject, without expreſſing himſelf in the language of that country.

Gentlemen, I ſay not this for the purpoſe of vindicating myſelf from theſe charges, for it has been proved to you clearly, from the evidence of Roſs, that theſe French terms were of his own inſertion. But I cannot help thinking that a ſpirit of malevolence dictated that part of the charge, and that theſe invidious inſertions were made for the purpoſe of infuſing into your minds an idea that I wiſhed to co-operate with France, with whom we are now at war: and I am the more authoriſed to ſtate this, as the firſt indictment with which I was ſerved, was totally devoid of theſe charges, and they have only been introduced in the ſecond. But theſe terms were the pepper and ſalt to ſeaſon the diſh for the gratification of the palate of the crown lawyers, and I, it ſeems, was to be offered up, like another ſon of Thyeſtes, as a victim for the banquet.

Gentlemen, the next charge againſt me is that of having uſed the word *citizen*. It was ſaid upon a former occaſion by the Solicitor General, that the uſe of the term was in itſelf innocent, and in many circumſtances might undoubtedly be proper; but

here,

here, again, he made a diſtinction. If a man, in the year 1745, (ſaid he) had walked the ſtreets with a white cockade, it would have been highly criminal; but now the action would be perfectly harmleſs, becauſe there is no party exiſting amongſt us of an attachment to whom it might be interpreted as an emblem.

But, Gentlemen, I hope your underſtandings will not be perverted by language of this kind, as you muſt ſee a moſt material and eſſential difference between marching up the ſtreet with a white cockade, and uſing the term *citizen*. The uſing of this term, though it may by ſome be deemed ridiculous, can, by none, be judged criminal. The word *citizen* is a term of peace, and denotes that relationſhip in which we ſtand to each other, as members of the ſame community, for the performance of our *civil duties*; whereas the wearing of a cockade is the emblem of a *military profeſſion*, and in the year 1745 was a particular and avowed emblem of hoſtility to the government of the country.

Gentlemen, the next part of the charge is, that theſe meetings were illegal and ſeditious. Now their illegality, I apprehend, muſt depend either upon one or other of theſe three principles; either on the name *Convention* which we took, the principles which that convention intended to eſtabliſh, or the manner in which they conducted themſelves after they met. Take away theſe three things and no charge remains, conſequently no ground of criminality. With regard to the firſt, our aſſumption of the name of Convention, I am ſure your own underſtandings will inform you, and it is a poſition to which the crown lawyers have aſſented, that to take a particular name does not conſtitute a crime. Many reſpectable gentlemen, in point of fortune and talents, met in a Convention, expreſſly ſo called, for a Reform in the Scottiſh Boroughs, in Edinburgh, and though their views were different from ours, ſtill it ſhews, that the bare aſſumption of that *name* does not conſtitute an offence in the eye of the law. Our crime muſt then depend either upon the principles which the Britiſh Convention intended to eſtabliſh, or the manner in which they conducted themſelves when met.

Gentlemen, in a cauſe ſo ſacred as the preſent, I would ſcorn to tell a lie to ſave my life. I boldly avow, and I hope the reaſons on which I ſhall defend the principles will be equal to the confidence with which I make the aſſertion, that our object was to procure, by *peaceful* means, Annual Parliaments and Univerſal Suffrage, and, in ſo doing, notwithſtanding all the declamation that has been urged againſt it, I ſhall endeavour to convince you that the eſtabliſhment of theſe principles is not only conformable to every maxim of ſound government, but congenial to the ſpirit of the Britiſh Conſtitution itſelf. In order, Gentlemen, to aſcertain the firſt point, that Univerſal Suffrage (perſons incapacitated by crimes and inſanity excepted) is in fact conſonant to the firſt principles of all good government, it will be neceſſary that we take ſome ſhort review of the fundamental principles of ſociety

ſelf.

itſelf. The great object of the ſocial inſtitution, the great object for which men form themſelves into ſociety is, I apprehend, the ſafe enjoyment of their lives and property. If, then, in the earlieſt ſtages of ſociety, every man poſſeſſed a right to the preſervation of his life, and alſo to the peaceable enjoyment of his property, it follows of courſe, that the mode of government, which is beſt calculated for the attainment of thoſe ends for which government itſelf was inſtituted, muſt be preciſely that very mode of government which all reaſonable beings would wiſh to ſee univerſally adopted amongſt men. Now, as every man claims from nature, a right of judging for himſelf on the beſt manner of promoting his own intereſt, and as no individual is born with any diſtinguiſhing mark of pre-eminence over his fellow men, or with any *charter* of exemption from the ordinary frailties of human nature, ſo every act of authority exerciſed by one man over another, or by a legiſlature over the *collective body of the people*, unleſs it be exerciſed by the conſent of the individual, in the one caſe, or of the collective body of the people governed in the other, muſt be an *act of tyranny*. The right of the exerciſe of the underſtanding is the nobleſt privilege of our nature, and indeed is inſeparable from our condition, as moral agents; moral agency, in fact, being nothing elſe, but the being guided by the dictates of our own underſtandings and conſciences in preference to thoſe of another. And if, after the enactment of poſitive law, we ſubmit to its authority, from which our private judgement may have revolted, it is only becauſe a greater number of reaſonable perſons conſenting to the law, than of thoſe diſſenting from it, carries with it the ſtrongeſt preſumption, that the paſſing ſuch law has been the reſult of a greater portion of reaſon, than its rejection would have been—that it is founded in juſtice and truth, and therefore more conducive to the great ends of ſociety, inaſmuch as it has received the authoritative ſtamp of the approbation of the greater number of its members, who, in all well-regulated communities, being equally entitled to a participation of its benefits, muſt of courſe be equally intereſted in promoting its welfare.

It is not true, that when men agree to erect a government they give up any portion of their rights: No; they only adopt a different mode of enjoying them. They give up nothing; but by combining their own *particular* force with the force of others, they adopt a plan, by which they are enabled to poſſeſs their rights in greater ſecurity. All juſt government, therefore, being only a delegation, it cannot be armed with more power than it derives from the conſent of them over whom it is exerciſed. Now, as prior to the eſtabliſhment of government, no man had a right to take from another any property without his conſent, and as all juſt authority exerciſed by any government muſt be derived from the people, ſo the government (which is, in other words, A NATIONAL ASSOCIATION FOR THE GENERAL GOOD) cannot of right exerciſe any power, which one individual, before government was

eſtabliſhed, was not authorized to exerciſe over another. Hooker, to whom Queen Elizabeth always applied the juſt epithets of learned and judicious, aſſerts, that the principle which I have juſt ſtated is the only ſolid foundation of all legiſlative authority. Laws they are not, ſays he, which *public approbation* hath not made ſo. *Hooker's Eccleſ. Pol. lib.* i. *ſect.* 10. And Mr. Locke expreſſly ſays, that "as government cannot be ſupported without great "charge (a truth which we, God knows! feel every day to our "coſt,) ſo it is fit that every one who enjoys his ſhare of the pro-"tection, ſhould pay out of his eſtate his proportion for the main-"tenance of it. *But ſtill it muſt be with his own conſent*, i. e. "the conſent of the majority, giving it either by themſelves, or "their repreſentatives choſen by them. For if any one ſhall claim "a power to lay and levy taxes on the people by his own autho-"rity, and without ſuch conſent of the people, he thereby in-"vades the fundamental law of property, *and ſubverts the end of* "*government*. FOR WHAT PROPERTY HAVE I IN THAT WHICH "ANOTHER MAY, BY RIGHT, TAKE WHEN HE PLEASES TO "HIMSELF?" Here then, Gentlemen, is the doctrine of *Univerſal Suffrage* expreſſly laid down. For as no man, in a ſtate of ſociety, can be altogether without property, either inherited or acquired by his daily labour, and as every man in the country pays a tax to government, either directly to the tax-gatherer, or indirectly through the commodities which he conſumes, which all taxes ultimately affect, ſo it appears to me clear as the light of Heaven, that every man of adult years, not incapacitated by crimes or inſanity, has a RIGHT TO A VOTE; otherwiſe he may exclaim, in the language of Mr. Locke, "what property have I in "that which another may by right take when he pleaſes to him-"ſelf?" That government, then, Gentlemen, which is not a government of *conſent*, muſt of neceſſity be a government of *uſurpation*.—After all, there are but three modes (except a man allows himſelf to be a public mendicant) in which money paſſes from man to man; by force, by fraud, or conſent. The firſt, it will not be contended, except by conquerors or highwaymen, can ever eſtabliſh a juſt ground of poſſeſſion. By the operation of the ſecond principle, I am afraid, it does paſs, whenever a man pays a tax in a government in which he is not repreſented. During the American war, Lord Cambden, the firſt law authority in England, and now preſident of the council, repeatedly aſſerted that "*taxation and repreſentation were inſeparable*" Now, if his lordſhip meant any thing by the word repreſentation, he certainly muſt have meant *adequate* repreſentation, for no other deſerves the name, or anſwers the end; which adequate repreſentation is well explained by Sir Thomas Smith, a writer of great note and authority, in his Commonwealth of England, p. 37. "Every Engliſhman," ſays he, "is intended to be preſent in par-"liament, either in perſon, or by procuration and attorney, of "whatever pre-eminence, ſtate, dignity, or quality ſoever he be,

"from

" from the prince to the loweſt perſon in England. And the " conſent of the parliament is taken to be EVERY MAN's conſent." Here is the doctrine of *Univerſal Suffrage* laid down in words as ſtrong as the Engliſh language can afford. It was then to repair theſe ravages which time, whom my Lord Bacon terms the greateſt INNOVATOR, had occaſioned, that the Britiſh Convention ſat; it was not to deform our conſtitution, but to reſtore it; it was not to promote, but to prevent its deſtruction, that we aſſembled. Beſides, Gentlemen, if the principle which Mr. Locke again ſtates (ſee book on Government, p. 236.) be juſt; " that the preſerva- " tion of property being the great end for which man enters into " ſociety," it neceſſarily ſuppoſes and requires, that the people ſhould have property, without which they muſt be ſuppoſed to loſe that by entering into ſociety, which was the end for which they entered into it; too groſs an abſurdity for any man to own. Men, therefore, in ſociety, having property, they have ſuch a right to the goods, which by the law of the community are theirs, nobody hath a right to take their ſubſtance, or any part of it from them, without their own conſent. If ſuch then, Gentlemen, is the principle which ought to regulate the intercourſe between man and man in the common affairs of life, by how much more ought that principle to be obſerved by the legiſlature itſelf, to whom the moſt ſacred of all truſts has been committed, and whoſe breach of any ſound and ſalutary principle will be the more criminal, in proportion as ſuch breach will be more extenſively miſchievous?

Theſe are the principles of a man, who has a long time deſervedly paſſed for one of the greateſt maſters of reaſoning which England ever produced; who wrote in expreſs vindication of the Revolution, and who afterwards held a place under King William (and would to God places had been always as worthily beſtowed!) until he went to receive the final reward of his labours, from that Being, who will always confer it upon thoſe who deſerve it well. Gentlemen, it is worthy of remark, that, not only ſpeculative writers upon government, but writers upon municipal law, Sir William Blackſtone himſelf, a judge, ſhould lay down the ſame principle, not in expreſs terms indeed, but, as you will ſee, very ſtrongly by implication. He ſays, " In a free ſtate, every man " who is ſuppoſed a free agent" (and unleſs a man is incapacitated by crimes or inſanity, every rational being may be ſo denominated) " ought to be in ſome meaſure *his own governor.*" *See Black. Comment, octavo edition, page* 158. Now, if words have any meaning, what does this eſtabliſh, but the doctrine of UNIVERSAL SUFFRAGE? For I know of no other definition of liberty, than that thoſe who are bound by the law, ſhould have a ſhare in the making of it, either perſonally, or by deputy; and no other idea of ſlavery, than that ſtate in which men are governed without their conſent. Men who make laws for me, may indeed impudently tell me that I am free, for men may lie;

but unleſs I have ſome ſhare in the appointment of thoſe who are to govern me, I can, in no ſenſe, be ſaid to be my own governor; but on the contrary, have no more concern with the government of my country, than I have with thoſe of Turkey or Morocco. Now, if the ſtrict obſervance of this principle be neceſſary to give government a *moral right* to take away the *property* of the ſubject, in how far greater degree ſhould the ſame principle be obſerved, as alone conſtituting a ſolid ground of authority, which can empower the legiſlature to frame laws, for a breach of which men are to be deprived of their lives?—It has been ſaid alſo, that the plan of UNIVERSAL SUFFRAGE is viſionary and impracticable. But this obſervation, if true, though it may mark the plan itſelf as abſurd, muſt neceſſarily diſcharge from blame all thoſe who have propoſed it. For a non-entity, like a phantom, is not to be dreaded, and a plan that is attended with no danger, is certainly no object of legal proſecution. No, Gentlemen, our Creator, I am confident, has placed every thing that is valuable, every thing that is neceſſary for our happineſs, within the graſp of human attainment. If then we ſhould wantonly indulge wiſhes, and purſue objects, which are neither proper for us nor attainable, the true and only puniſhment ſhould be (as it muſt be) the fruſtration of our hopes, and the anguiſh of our diſappointment. If like children we cry for the moon, like children we ſhould cry on.

But, fortunately for me, Gentlemen, my experience enables me to give a flat contradiction to the poſition advanced. I myſelf reſided, during four years, in a country where every man who paid taxes, had a right to vote; I mean the commonwealth of Pennſylvania. I was an eye-witneſs of many elections which took place in Philadelphia, the capital of the ſtate, an induſtrious and populous city, and can ſafely aſſert, that no one riot ever enſued. For, in truth, Gentlemen, the repreſentative had no intereſt diſtinct from his conſtituents; the office which he undertook was rather a burthen than a benefit, and as the government was too poor to purchaſe, and the people too virtuous to barter away their liberties, (even if the caſe had been otherwiſe) ſo the deputy, though he had every opportunity to ſerve, had no temptation to ſell his conſtituents. What then has been found by experience to be wholeſome food for Americans, can never prove hurtful or poiſonous to Britons, the parent ſtock from whom Americans are deſcended.

Gentlemen, I am aware, that every practice and inſtitution is a one defenſible upon its own intrinſic merits, and the reaſon of the thing; yet the adoption of any principle, by men eminent for virtue and learning, is certainly no ſmall preſumption of the ſoundneſs of the principle itſelf. Gentlemen, Sir William Jones, a name too diſtinguiſhed in literature to derive ſplendour from any encomiums I can beſtow upon it, and who has acted as a judge for more than twelve years in India, previouſly to his departure publiſhed a tract,

in which he vindicated the doctrine of *Univerſal Suffrage*. At a very early period of my life, I was honoured with the friendſhip and patronage of this gentleman, and I am ſure he would deeply feel, even after this long ſeparation, any calamity which might befal me; a calamity (if it be one) certainly, not altogether, but in ſome meaſure, perhaps, produced by converſation with thoſe whoſe practices were pure, and whoſe principles I conceived to be juſt, and who were therefore objects of reverence among men. Yet this very gentleman, at this very period, holds an office of great truſt and great emolument in his Majeſty's important ſettlement of Bengal, and unſeals thoſe ſacred fountains of juſtice which gladden and refreſh fifteen millions of men.

Gentlemen, having now proved to you that the principles of which I am accuſed muſt be, in fact, the principles of all good government, and that they have been ſupported by the greateſt of all human authorities; I ſhall now prove, I truſt, equally to your ſatisfaction, from incontrovertible hiſtorical documents, that they are alſo congenial to the ſpirit of our conſtitution.

Gentlemen, Monteſquieu has told us, that the rudiments of our excellent conſtitution are to be ſought and found in the woods of Germany; where, as Tacitus informs us, *all* were *free*, and where all were entitled to deliberate upon matters of national importanee. No propoſal could paſs into a law, binding upon the people, which had not been approved by the people.

"*De Germania. De minoribus rebus* PRINCIPES *conſultant, de* "*majoribus* OMNES. *Ita tamen ut ea, quoque, quorum penes plebem* "*arbitrium eſt apud principes* PROTRACTENTUR."*

Gentlemen, in the earlieſt ſtages of ſociety, when commerce was ſcarce budding, almoſt every inhabitant held a certain portion of land: and as land alone, in thoſe days, was the fund from which taxes were raiſed to ſupport the expences of government, ſo every land-holder (of which deſcription was almoſt every member of the community) had a right to vote. Squire, in his view of the Anglo Saxon Government, a book of very profound reſearch, (Gentlemen, Squire was Archdeacon of Bath, and afterwards Biſhop of St. David's, and it is certainly no part of the Epiſcopal function to diſſeminate ſeditious doctrines among the people) Squire tells us, the affairs of the country were, at that time, conducted by the king, the witenagemot and the myclegemot. The witenagemot, or king's court, was an aſſembly of the beſt and the wiſeſt men in the nation, correſponding to what our privy council is, or (I beg pardon of our anceſtors) correſponding to what a privy council *ought* to be. The myclegemot, on the other hand, were a body choſen by the *people at large*,

* I have adopted the reading of Colerus and Acidalius, in preference to the common reading, which is *pertractentur*, and which correſponds to the προβουλευεσθαι of the Greeks, the proper buſineſs of the ancient ſenates.

correſponding to what the principles of our conſtitution ſuppoſe the parliament ſhould be, a real repreſentation of the people. "The Witenagemot (ſays Squire, ſee p. 190) were perſons ſup-"poſed to be beſt acquainted with the exigencies of the public. "It was their duty to *propoſe* what they thought moſt expedient "for the good of the *whole*; the new laws, eſpecially, ſeem all "to have been drawn up and prepared by them, though nothing "which they did of this kind was obligatory to the community, "until it had received THE GENERAL CONFIRMATION." How was this general confirmation to be brought about, but by the vote of every *freeman?* a term applicable to all, except ſuch as were in a ſtate of perſonal ſlavery, who upon the Norman conqueſt were denominated villains; a ſet of men, correſponding to what, your lordſhips well know, the civil law calls *adſcriptitii glebæ*; but who have ceaſed to exiſt in this country for near a century and a half, villanage being formally aboliſhed by an act of parliament paſſed in the early part of the reign of Charles II. As it is ſtrictly conformable to the ſpirit of our conſtitution, to conſtrue all laws and cuſtoms in *favorem libertatis*, ſo perſonal ſlavery being now done away, and all Britiſh citizens being *freemen*, they are of courſe entitled to all thoſe privileges which even the expreſs letter of our early conſtitution conferred upon them as deſcribed, exerciſed, and enjoyed in their fulleſt extent.

Gentlemen, this was the form of government, which in a very early period prevailed; theſe were the principles which flouriſhed during the reign of the Great Alfred, than whom never lived a purer legiſlator; and who, Hume, in expreſs terms, tells us, approached as nearly to perfection as the infirmities of human nature would admit. If then, Gentlemen, theſe doctrines are conformable to the univerſal principles of juſtice and of reaſon; if they are expreſsly maintained by ſo reſpectable an authority as that of Mr. Locke; if they are implicitly aſſented to by ſo reſpectable a judge as Sir William Blackſtone, (for the words, "eve-"ry man is his own governor," mean that, or they mean nothing) if they have been publicly avowed by Sir William Jones, who, in point of learning, yields to no man to whom this kingdom has given birth, ſince the days of Lord Bacon; I cannot, ſurely, be charged with innovation and a deſign to diſturb the public peace, for having circulated principles that have long been current, and which men of ſo diſtinguiſhed reputation have acquired fame in ſupporting.

Gentlemen, I know much nonſenſe has been talked about virtual repreſentation: but if repreſentation be not real, it is no repreſentation at all. I wiſh to God that the ſupporters of virtual repreſentation would impoſe on us only virtual taxes, and inflict virtual puniſhments; but this they will not do: therefore, till that event, I do not think they have any right to more than virtual taxation. Gentlemen, I lay down theſe principles as ſubjects for your conſideration merely; for I hold that every incon-

venience

venience is to be borne for the preſervation of the general peace. But whenever governments act directly contrary to the end for which they were inſtituted; when, inſtead of being the guardians, they become the oppreſſors of our liberties, common ſenſe, common juſtice, and expreſs law authorities, will tell us they are no longer objects of obedience: and this our anceſtors confirmed, when they eſtabliſhed the Revolution.

Gentlemen, I am not ſo well ſkilled in the hiſtorical antiquities of Scotland as I could wiſh, or, perhaps, as it was my duty to have been; but I beg you will carry this principle continually in your minds, that if ſuch have been the privileges of England, and if this country is entitled, by the articles of Union, to the ſame privileges, I ſee no offence in wiſhing, and attempting to effect, that Scotſmen ſhould be admitted to a participation of the ſame rights. I have, in my hand, a book of the late Dr. Stuart, who has written upon the public law and conſtitution of Scotland, in which are ſeveral paſſages that favour, very much, the doctrines I have laid down, and which, at the ſame time, prove a ſtrong ſimilitude between the ancient Scottiſh and Engliſh conſtitutions. "In the body of the laws of William the Lyon, who "began to reign in the year 1165, are theſe notices: *Aſſiſa regis "Willielmi, facta apud Perth, quam epiſcopi, abbates, comites, ba-"rones, thani, et* TOTA COMMUNITAS REGNI, *tenere firmiter jura-"verunt.*" "An aſſize of King William, made at Perth, which "the biſhops, abbots, knights, barons, thanes, and *whole com-"munity of the kingdom*, firmly ſwore to maintain." Cap. 7. And again, "*ſtatuit rex per concilium et aſſenſum* TOTIUS COMMUNI-"TATIS SUÆ." "The king hath enacted by the advice and "conſent of *his whole community*." Cap. 4. The preamble to the laws of Robert I. is alſo in theſe words, "*habitoque ſolemni "tractatu, cum epiſcopis, abbatibus, prioribus, comitibus, baroni-"bus, et aliis magnatibus,* DE COMMUNITATE TOTIUS REGNI "*ibidem congregatis, ſuper variis et arduis negotiis,*" &c. "The "conſtitution was greatly treated of with the biſhops, priors, "knights, barons, and other great perſonages of *the whole com-"munity of the kingdom*, at the ſame time gathered together, upon "various and arduous affairs." So when John Baliol told Edward I. that he "*could not* and *dared not* expreſs any ſentiment which "concerned his kingdom without conſulting his people," he meant ſomething more than the ſanction of the prelates, the nobles, and the tenants in capite. *Ryley Placit. parl. p.* 159, *an.* 1293. And Dr. Stuart, that profound and laborious antiquarian, poſitively ſays, that "the expreſſion of Baliol is eaſily compre-"hended, and had a reference to the *whole kingdom*." (*See Obſervations concerning the Public Law and Conſtitutional Hiſtory of Scotland, p.* 334.) The expreſſion Magnates, or *great men*, which is found in the ſtatute of Robert I. that I have juſt quoted, may, I am aware, be ſuppoſed to apply only to perſons of higher rank, yet, upon examination it will, I am confident, be found ſtrictly

applicable

applicable to the repreſentation of the *people*, the *tota communitas*. For in England it appears exactly in the ſame ſenſe; and we know, both from Rymer and Petit, that in that kingdom, *noble*, *moſt noble*, *moſt illuſtrious*, *moſt precious ſeignors*, *monſeignors*, and *ſirs*, were appellations of the *Commons*. Here, then, is a proof, that in the early period of the hiſtory of Scotland, the *whole community of the kingdom*, (*i. e.* every free man) not collectively, no doubt, but *repreſentatively*, were concerned in paſſing thoſe laws, which they alſo ſwore they would firmly maintain.

Gentlemen, I cannot account for this coincidence between the conſtitutional forms and principles of England and Scotland, at ſo early a period of our hiſtories, without ſuppoſing that they muſt be congenial to the natural order of all government itſelf; and that theſe deviations which have ſince been made by the ravages of time, have been the abuſes of the conſtitution, and not the principles of it.

Gentlemen, the third charge againſt me is that of having urged arguments in ſupport of annual parliaments; though I have heard from very reſpectable authority, no leſs, I believe, than one of the learned lords upon the bench, that he did not conceive there was any material objection to ſuch a meaſure. He gave indeed no deciſive opinion upon it; but he ſeemed to think, that a mere peaceful diſcuſſion of the ſubject of annual parliaments would not render a man an object of criminal proſecution by the laws of this country. But I go further; I apprehend that annual parliaments may be ſupported as well by the reaſon of the thing, as by ancient uſage; and upon this plain principle, that power long continued is too apt to corrupt the diſpoſition of the poſſeſſor, and that a people, when they intruſt ſo ſacred a charge as that of making laws, (the abuſe of which may work a deſtruction of their lives, and the ruin of their property) cannot be too vigilant in obſerving the conduct of thoſe to whom they delegate this truſt, nor too quick in recalling them whenever they abuſe it. By long parliaments we loſe the great advantage which our conſtitution has provided, of curing the evil before it grows confirmed and deſperate, by the gentle method of chuſing a new repreſentative; and the *people* are by conſequence reduced to have no other alternative than that of ſubmitting or reſiſting; though ſubmitting will be as grievous, and reſiſtance much more difficult when the *legiſlature* betrays its truſt, than when the *king* alone abuſes his power. Beſides, ſhort parliaments, ſhould they become ſuddenly corrupt, carry with them their own corrective; for, "leeches, "and other blood-ſucking worms," as Davenant well obſerves, "are engendered in ſtanding pools; flowing waters do not cor-"rupt nor breed ſo many inſects."

It is a melancholy fact, but it is a very certain one, that parliaments have generally been dangerous in proportion as they have been long.

The

The long parliament (peculiarly ſo denominated on account of the length of time which they ſat) in the reign of Charles I. I believe were inſtrumental in bringing the head of that unfortunate monarch to the block. I cannot, therefore, believe, that long parliaments can be ſupported by gentlemen, who avow, that their intention is to defend monarchical principles; when a long parliament was that which overturned the monarchy, and beheaded the ſovereign. The Houſe of Commons, which ſat for ſo long a time in the reign of Charles II. were ſo notorious for their profligacy, that Rapin aſſures us, "one half of them were "bribed by the Court of France;" probably, the other half by our own.

Gentlemen, I am well aware that it may be ſaid, that if elections were more frequent, greater tumults would enſue. I apprehend the reverſe of this poſition is exactly the truth; for, it might be worth the while of a member of parliament to get elected under the corrupt influence of the Miniſter, when he is in for ſeven years, though not when he is in only for one; for, knowing that he muſt at the end of a year give an account to his conſtituents, he would take greater care how he executed the important truſts committed to him, than if he was delegated for a longer time. If then, Gentlemen, the object of getting into parliament would not be ſuch as to make it a ſtronger inducement for perſons, in general, to become members, of courſe tumults would not ſo frequently enſue at general elections, as, to our misfortune and diſgrace, they do under the preſent ſyſtem.—In ſupport of this doctrine of annual parliaments, I am fortified by the authority of a gentleman who is, and who has long been, a Member of the Houſe of Commons, I mean Mr. Alderman Sawbridge, who, wearied out at laſt by continual diſappointments, has abandoned his project, not from conviction, but deſpair. The treaſury bench, indeed, *ſolito more*, "according to cuſtom," never made Alderman Sawbridge's propoſal the ſubject of diſcuſſion; but, as often as the motion was made, coolly negatived it, by the *dead eloquence* of numbers.

Gentlemen, parliaments, you muſt recollect, were annual, till the time of Henry VIII. He was the firſt who broke in upon the cuſtom of annual parliaments; and he, I truſt, will never be brought forward as an authority; as he was a *monſter*, of whom it was emphatically ſaid, "that he ſpared no man in his wrath, "nor woman in his luſt;" and who diſtinguiſhed himſelf, during a long and bloody reign, by oppreſſing his ſubjects, and beheading his wives. Beſides, Gentlemen, as the great object of the SOCIAL INSTITUTION is to call forth, to their fulleſt exertion, the aggregate faculties of all thoſe who are members of it, for the purpoſe of producing the great poſſible ſum of happineſs; ſo, if this cuſtom of annual parliaments were revived (for they are not innovations) it would introduce many more into public buſineſs, who are now excluded from it, and whoſe minds being

inflamed and invigorated with a love of glory, and a paſſion for promoting the public weal, would rouſe themſelves from that ſupineneſs which invites oppreſſion, and which is too often the bane and deſtruction of nations. For, under the preſent ſyſtem, many perſons having ſcarcely any concern with the government, except as they are called to ſupport it by the payment of taxes, they either grow careleſs and indifferent about the meaſures which it adopts, or ſeek to better their condition by recourſe to violence.

Gentlemen, it appears that ſuch alſo was the law of Scotland; for I find by a ſtatute paſſed in the firſt parliament of James VI. in the year 1587, "it is ordained, that the commiſſioners of all "the ſchirreſſdomes of this realme be elected be the freehalders "foreſaids, at the firſt head court after Michaelmas *zeirly*."* It is, therefore, no new doctrine in Scotland any more than it is in England. And I find by an article of the CLAIM OF RIGHTS that the Old Scottiſh Conſtitution was to be reſtored; which claim of rights certainly took place after the paſſing of that act, and which act conſtitutes an eſſential branch of the Scottiſh Conſtitution.

A very eminent writer, Gentlemen, upon annual parliaments, begins his book with this very remarkable obſervation, "*where* "*annual election ends, ſlavery begins.*"† And he ſtates preciſely the reaſons that I have ſtated to you, that if power continues long in the ſame hands, it has a tendency to corrupt, and that it ſhould not only be delegated for the benefit of thoſe over whom it is exerciſed, but, that it ſhould alſo be delegated in ſuch a manner as to prevent any *permanent*, if not *immediate* abuſe of it.

Gentlemen, I now come to the period of the Revolution, an event which eſtabliſhed our conſtitution, (it is ſaid) a conſtitution, however, which weak men, I fear, praiſe without underſtanding, and which wicked men violate while they praiſe. The Engliſh delegates have been charged with an intention of having come to this country for the purpoſe of deſtroying thoſe advantages and benefits which the ſubjects of the two united kingdoms derived from that glorious event. If the charge could be brought home to us, it would not be merely a tranſportation to Botany Bay, which ought to be our fate, but an execution at the gallows. But the charge is totally unfounded, and I am ſurpriſed that it has been brought forward by perſons in particular ſituations; ſince that charge, like many others, will, upon examination, recoil on the heads of thoſe who made it. I will ſhew you, Gentlemen, that the benefits of the Revolution have been done away, but not by us; for it was our purpoſe to revive them. Has it not been proved, by Mr. Wharton, in the Houſe of Commons, in a ſpeech

* Anglicé *yearly*.
† Eſſay on the Britiſh Conſtitution.

to which no anſwer was given, that not one ſingle veſtige remains of the wholeſome regulations which the Revolution produced. I know that it is treading over beaten ground; but, I truſt, you will not think your time uſeleſsly conſumed, when it goes to eſtabliſh a point, upon which my guilt or innocence materially depends. I ſhall now read to you extracts from a pamphlet, of which I am not aſhamed to avow myſelf the author, entitled, "Addreſs of the Britiſh Convention to the People of Great Bri-"tain," and which was drawn up by me at their expreſs direction:—"The ſpirit of Alfred again aroſe to animate the councils "of his regenerated country. Scotland, which had long groaned "under the denomination of an auſtere and inſolent ariſtocracy, "was called in to ſhare with her brethren of England, the bleſ-"ſings of freedom which ſhe had contributed to produce. Place-"men and penſioners were excluded *by law* from the Houſe of "Commons, leſt a ſenſe of their dependence on the crown "ſhould, as it muſt, make them forgetful of their duty to the "people. Parliaments were not to ſit for more than three years, "ſince power long continued is commonly abuſed, as thoſe en-"truſted with it are too prone to forget the hand which gave, "and the purpoſe for which it was given. Miniſters were made "anſwerable for the counſels which they afforded, and the throne, "now guarded by the vigilance, and ſuſtained by the love of all "its ſubjects, was no longer a ſanctuary for the treachery of its "ſervants.

"Friends and Countrymen, theſe wiſe and wholeſome provi-"ſions, which were once the boaſt and ſecurity of Britons, now "form only an object of melancholy remembrance. They are "buried in the ſame ſepulchre with the bodies of our anceſtors. "In many parliaments, which have ſitten ſince the Revolution, "placemen and penſioners have been ſo numerous, as to controul "the will, while they violated the rights of the people. Since "that time, parliaments have more than doubled the term of "their duration, not by an appeal to the voice of their electors, "but by the arbitrary effort of a ſelf-conſtituted authority. "Judging from this ſpecimen, and drawing the natural inference, "that what *has* been done *may* be done again, we know of no "barrier or ſecurity, at preſent exiſting, to prevent a future "parliament from enlarging the term of their duration to twenty "years, or, if it ſuits their intereſt or ambition, from declaring "themſelves perpetual. THE RESPONSIBILITY OF MINISTERS "HAS BECOME AN EMPTY NAME. Crimes which, during former "periods, would have called down upon the heads of their guilty "authors the juſt vengeance of an injured nation, have been only "a paſſport to opulence and power. The people of Britain have "ſeen the very miniſters who diſmembered the empire, ſquan-"dered a hundred millions of money, and poured out the blood "of more than a hundred thouſand of their fellow-ſubjects in a "cruel and deſperate conteſt, again recalled into the confidence

" of their ſovereign, and loaded with the honors and emoluments
" of the empire.

" Thus you behold, that the ſpirit of thoſe regulations, which
" the Revolution produced, is fled, and what remains is only the
" dead carcaſe which encumbers the ſtatute book. We now aſk,
" who are thoſe, that are guilty of innovation? Is it that band
" of hirelings, to whom corruption is food, or is it we, who
" wiſh only to reſtore the principles of our Saxon anceſtors,
" which gave us freedom, and that ſacred compact which con-
" firmed it at the Revolution? If the foundations of the throne
" are ſhaken, are they ſhaken by us, who ſeek only to replace
" it on thoſe ſolid grounds on which it was originally erected; or,
" are not they rather ſhaken by thoſe who, with hollow profeſ-
" ſions of loyalty in their mouths, have ſought to eſtabliſh the
" authority of the crown, by the renovation of thoſe practices
" which baniſhed the Stuarts, and by the violation of thoſe prin-
" ciples which elevated the Brunſwicks? We cheriſh the conſti-
" tution of our anceſtors, not as a ſpeculative bauble, but as a
" practical good; and we contraſt, with an honeſt pride, our
" own ſincere admiration of that ſyſtem, with the fawning trea-
" chery of its real foes—of men, whoſe praiſe is profanation, and
" whoſe external homage is concealed blaſphemy."

Yet, notwithſtanding, the preſent ſyſtem of government is a libel upon our real conſtitution; the word *conſtitution, conſtitution!* is rung in our ears with unceaſing perſeverance. This is the *taliſman* which the enemies of reform wield over the heads of the credulous and the ſimple; and, like old and wicked enchanters, having firſt bound them in the ſpell, take advantage of the drowſineſs which their arts have created. But to hear placemen and penſioners talking of a conſtitution, when their whole lives are one uniform violation of its principles, is like a monk preaching population, or a farmer general commiſerating the diſtreſſes of the poor.

Gentlemen, there is one particular error, into which all thoſe who have enumerated the regulations which took place at the Revolution have fallen, and of which, until a few days paſt, I myſelf was not conſcious. Having no other object but truth, I beg leave to ſtate it to you. The bill for excluding placemen and penſioners, though it paſſed in the reign of King William, was not to take effect until the acceſſion of the houſe of Hanover. In the intermediate period, indeed, that act was repealed; but does not the paſſing of the act, at the period of the Revolution, clearly prove that we are entitled to its revival, now, when the houſe of Hanover is ſitting on the throne, in conſequence of that very revolution; and when it may be ſafely inferred, that the act alluded to, and their compliance with its principles, was made a condition of their ſubſequent elevation?

Gentlemen, the public proſecutor has, in vague and *general* terms, charged me with an intention of overturning the conſtitu-

tion;

tion; but I now call upon him, in terms *particular* and preciſe, to declare whether the ſyſtem under which he acts, has not rooted out every valuable principle, every wholeſome regulation, which the revolution produced; whether thoſe regulations are a *living ſpirit*, or a *dead letter*, whether *placemen* and *penſioners* do not now ſwarm around the treaſury bench, like vermin on the banks of the Nile. And even when, by a mockery of our underſtandings, they vacate their ſeats, for a ſhort time, for what is called the Chiltern Hundreds, are they not again elected?—elected did I ſay? No! again nominated by the peer who originally ſent them, in a manner as peremptory as the king, by his Congé d'Elire, nominates a biſhop! This, Gentlemen, is not idle declamation; it is ſolid fact, and incontrovertible proof. I therefore call upon you, my countrymen, in your turn, and aſk you, how you can conſcientiouſly lay your hands upon your hearts, and ſolemnly declare, before God and the world, that I have attempted to overturn a ſyſtem, of which it has been proved to you not a veſtige remains? Do you not know, that thoſe who inſtigated this proſecution, when called upon to revive theſe principles of the conſtitution, as they could not anſwer the arguments of the patriot Wharton, preſerved a ſullen and criminal ſilence? What then muſt you think of a ſtate proſecution, which reſts for ſupport on ſo ſandy a foundation; or what rather muſt you not think of the conduct of thoſe men, who, while they are heaping upon my devoted head, the charges of treaſons, conſpiracy, and ſedition, can give the real ſcandal of ſo notorious and wilful an inſincerity?

Gentlemen, the triennial bill has long been repealed; but why not now revive it;—ſince the reaſon on which it was repealed, has long ſince ceaſed? For, if you will take the trouble, Gentlemen, of looking at the parliamentary debates of that period, not even the rankeſt miniſterial hireling attempted to defend the meaſure upon any other principle than that of *temporary expediency*; as it was thought unſafe to expoſe the country to the tumult of a general election, when a rebellion was raging in the heart of the kingdom. But now, it ſeems, the ſeptennial bill has become as much a part of our governnment, as the malt-tax, the mutiny-bill, and a ſtanding army; which when firſt paſſed, it was declared, were only to be temporary, and, like the ſeptennial bill, were only ſubmitted to on, the fatal plea of a ſtate neceſſity. "The reſponſibility of miniſters, it is ſtated, "has become an empty name." Would to God it were falſe; but is not the fact as melancholy as it is true? Do not thoſe miniſters who conducted the American war (an event which ſhook theſe kingdoms to their deepeſt foundation) conduct the preſent war? Did not Lord North, who was prime miniſter during the whole of the war, enjoy, for many years after the war was ended, a ſinecure place of 5000l. a year (now indeed devolved upon Mr. Pitt?) And do not his family, at this very hour,

hour, receive from the country a conſiderable income, granted during their father's miniſtry, by way of reverſion, though I could never learn that they have earned it by their ſervices?

Gentlemen, the right of our meeting in convention by *delegation* has been expreſſly denied by the Solicitor General, and he (I am ſure if I miſtake his meaning, it is not purpoſely, and I beg he will interrupt me) I think he denied our right to meet by delegation. Had we met as the united delegates of all Britain, we ſhould have arrogated a title to which we had no right. But we did no ſuch thing: we met, only as the repreſentatives of ſome thouſands, who delegated us for a purpoſe which we knew to be conſtitutional; and we conducted ourſelves in a manner firm, but peaceable.

If, in the common *buſineſs* of life, a man can receive a power of attorney to manage the pecuniary concerns of another; ſo I truſt he is authoriſed to carry into execution, for the benefit of his fellow-creatures, affairs of much greater concernment; otherwiſe you deny him, in fact, that privilege, without which all others are nugatory, I mean the eſſential privilege of ſelf-preſervation. I am happy, however, that the charge is brought forward, as a ground of criminality; inaſmuch as the meeting, which delegated us, was publicly held in an open field, in the face of day, in the preſence of many thouſands of our fellow-citizens, who were calm and attentive ſpectators of what was paſſing, and in the preſence, even, of five hundred peace officers, ſome of whom were members of our aſſociation, and others ſent, by the ſecretary of ſtate, to watch over our proceedings and to make their report. Of the latter, I can aſſert from my own perſonal knowledge, many became converts to our doctrines; which, as they were founded in reaſon, and have no other object than the general welfare of mankind, muſt make converts of all who have not an intereſt in oppoſing what it is their duty to practiſe. All theſe things, Gentlemen, were ſuffered to paſs under the eye of the police, under the very beard, if I may ſo ſay, of the ſecretary of ſtate himſelf, who is, *ex officio*, the great conſervator of the public peace; and in the very heart of the capital of our country, which is, or which ought to be, the great ſanctuary of the law.

Gentlemen, the publicity of our conduct was certainly a proof that *we* deemed it to be innocent. And if the officers of ſtate deemed it to be otherwiſe, upon what principle can you excuſe their ſupineneſs and inactivity in not diſperſing the meeting, and taking up the delegates; ſince to *prevent* crimes is far better than to *puniſh* them, and far more the duty of the civil magiſtracy, unleſs in "the pride and naughtineſs" of their hearts, they ſought to cheriſh the ſeeds of a ſtate-proſecution againſt men whom they had marked out as the victims of their reſentment? Their conduct, then, we can only look on as TRAPS TO ENSNARE US. Gentlemen, if what I have ſtated be well founded, we are entitled

to

to draw theſe melancholy inferences; that the articles of the Union are violated in this buſineſs, and that there is *not*, as the fourth article avers there ſhall be, "a communication of all "rights and privileges between the ſubjects of both kingdoms;" ſince a man may commit, with impunity, on the other ſide of the Tweed, what if he croſſes it, he ſhall be tranſported for; that an unity of the principles of action, an equal and undiſtinguiſhing law, operating either to the puniſhment or ſecurity of all citizens alike (and which is the great badge of *freemen*) does not prevail among us; but that the code of the two countries is an heterogeneous maſs, like Nebuchadnezzar's image, made up, partly of clay, and partly of braſs. Theſe facts, it would be like burning day-light to prove, and he that runs may read them.

Gentlemen, the great and diſtinguiſhing mark of man is reaſon. If we are debarred from the privilege of exerciſing this invaluable faculty, we are reduced to a ſituation, I will not ſay on a level with the beaſts of the field, for many of them, like ourſelves, are ſocial and gregarious, and have the power (from the exerciſe of which the laws of this country have not yet debarred them) of communicating their ideas, though not indeed by articulate ſounds; if we are debarred from this privilege, then, I ſay, we are reduced even lower than the brutes, and put upon a level with oyſters and other ſhell-fiſh, whoſe powers of motion are limited to gape and receive, what the bounty of nature, unlike that of the governments of the earth, which rather take than give, confers for their ſupport. The conſtant theme of the ſupporters of government is the excellence of the Britiſh Conſtitution. Willing as we are to admit the poſition, it is certainly not unreaſonable to aſk how is this excellence to be aſcertained? It is ſurely not a matter of inſtinct; conſequently, can only be aſcertained by the exerciſe of our reaſon. If you deny us this privilege, or, what is nearly the ſame, puniſh us for the uſe of it, your government, I aver, ſtands preciſely upon the ſame foundation as the governments of Turkey and Algiers; for the Viziers, the Baſhaws, and other ſtate officers of thoſe arbitrary governments, ſo long as they are enjoying their ſalaries, and fleecing the people, will aſſert, no doubt, with equal confidence, that thoſe governments are the beſt, and that all attempts to examine, or controvert by reaſon, the principles on which they are founded, are highly ſeditious, have a tendency to diſturb the public peace; and are, therefore, deſerving of the puniſhment of the law. If you interdict the free uſe of our reaſoning faculties on matters of government (and they do no more) you and they are exactly on a par; and if you do not, the diſpute between us is at an end, as you concede the very point for which we are contending.

Gentlemen, it is a very melancholy conſideration in the preſent times, and it is with a mixture of grief and aſtoniſhment I ſpeak it, that the very ſame kind of arguments, which at the dawn of the Reformation were made uſe of by the Catholic

clergy, who were endeavouring to hold the people in the fetters of ſuperſtition, are now made uſe of by thoſe very perſons, who, for purpoſes equally ſelfiſh, are repreſſing the progreſs of political information. Cardinal Bellarmine, a man eminent for learning, but vehement in his oppoſition of religious reformation, declaims, particularly againſt the impious attempt to diffuſe knowledge among the lower claſſes; and to lay open *the Holy Scriptures to vulgar eyes.* Religion in thoſe days, it ſeems, like government in the preſent, was to be believed and confided in without being examined. Oh! prepoſterous inſult to the dignity of human reaſon! Oh, blaſphemy againſt the Author of all goodneſs! As if the Parent of knowledge were capable of giving a revelation to his creatures, to be adopted for ages by millions of reaſonable beings, that would not ſtand the teſt of human inquiry. The true religion, like all free governments, appeals to the underſtanding for its ſupport and not to the ſword. All ſyſtems, whether civil or moral, can only be durable in proportion as they are founded on truth, and calculated to promote the GOOD OF MANKIND. This will account to us, why governments ſuited to the great energies of man have always outlived the periſhable things which deſpotiſm has erected. Yes! this will account to us, why the ſtream of time, which is continually waſhing the diſſoluble fabrics of all ſuperſtitious impoſtures, paſſes without injury by the adamant of Chriſtianity.

It is worthy of remark, Gentlemen, that in our days, the great champion of deſpotiſm has not ſcrupled to borrow his favourite phraſe from a monkiſh writer, who was an enemy to the Reformation: Knighton, an abbot of Leiceſter, who wrote at the beginning of the Reformation, when he is deploring the publication of the Scriptures to the common people, has this remarkable expreſſion, "Pity it is, that this evangelical pearl ſhould be "trodden down under the foot of *ſwine.*" Mr. Burke laments that "learning ſhould be trodden down under the hoof of the "ſwiniſh multitude." In juſtice to the mouldering monk, I muſt, however, obſerve, that the expreſſion, conſidered merely as an expreſſion, is truly beautiful; whereas, Mr. Burke's phraſeology is as deſtitute of taſte and congruity, as it is devoid of benevolence.

But, Gentlemen, if you take the principle of the thing, you will find that every nation has a right, not only to preſerve the form of government, which is actually eſtabliſhed; but, alſo, by the peaceful and calm operation of reaſon, to improve that form of government, whatever it may be. If you deny this poſition, you muſt ſay, that our anceſtors had a privilege which we have not a right to exerciſe: an abſurdity too groſs to deſerve a ſerious refutation; ſince all men being born equally with the ſame rights, through every ſucceſſion of ages, no generation can annihilate or curtail the rights of a ſubſequent one. The *moral* right, indeed, of altering any government muſt always depend upon

upon the particular circumſtances of the caſe, but the *abſtract* right is always veſted in the PEOPLE; of the moral exerciſe of which (however they may occaſionally abuſe it) they muſt be, and they are, the proper and ultimate judges. What, therefore, the Solicitor General has ſaid, that we have now, *no right* to frame or alter the conſtitution, but that it is our duty implicitly to obey it, ſince it was eſtabliſhed at the Revolution, and tranſmitted to us by our anceſtors, I deny to be ſound reaſon, or ſalutary political doctrine. In adopting this poſition, I am fortified by the authority of Algernon Sydney, than whom a purer ſpirit never appeared before the tribunal of his Maker: "Laws "and conſtitutions (ſays he) ought to be weighed, and whilſt all "due reverence is paid to ſuch as are good, every nation may "not only retain in itſelf a power of changing or *aboliſhing* all "ſuch as are not ſo, but ought to exerciſe that power according "to the beſt of their underſtanding, and in the place of what was "either at firſt miſtaken, or afterwards corrupted, to conſtitute that "which is moſt conducive to the eſtabliſhment of Juſtice and "Liberty. But ſuch is the condition of mankind, that nothing "can be ſo perfectly framed as not to ſhew ſome teſtimony of "human imbecility, and frequently to ſtand in need of repara-"tion and amendments. Many things are unknown to the wiſeſt, "and the beſt men can never wholly diveſt themſelves of paſſions "and affections. By theſe means, the beſt and wiſeſt are ſometimes "led into error, and ſtand in need of ſucceſſors like to them-"ſelves, who may find remedies for the faults they have com-"mitted; *and nothing can or ought to be permanent but that which "is perfect.* No natural body was ever ſo well tempered and "organized, as not to be ſubject to diſeaſes, wounds, or other ac-"cidents, and to need medicines, and other occaſional helps, as "well as nouriſhment and exerciſe; and he who, under the "name of *innovation*, would deprive nations of the like, does, as "much as lies in him, condemn them all to periſh by the defects "of their own foundations. Some men obſerving this, have pro-"poſed a neceſſity of reducing every ſtate, once in an age or "two, to the integrity of its firſt principles: but they ought to "have examined, whether that principle be good or evil, or ſo "good that nothing can be ever added to it, which none ever "was; and this being ſo, thoſe who will admit of no change "would render errors perpetual, and depriving mankind of the "benefits of wiſdom, induſtry, experience, and the right uſe of "reaſon, oblige all to continue in the miſerable barbarity of "their anceſtors, WHICH SUITS BETTER WITH THE NATURE "OF A WOLF THAN OF A MAN." Sydney on Government, quarto edit. p. 405.

Gentlemen, we all know that the human mind is ſuffered to be active in the improvement of thoſe civil arts, which conduce to the comfort and happineſs of human life, I mean the mechanical arts; and ſhall the grand art of all, that of making men ſecure in the enjoyment of their acquiſitions, I mean the art of government,

be alone neglected, alone compelled to be ſtationary? But abandoning the principle and reaſon of the caſes, the facts themſelves contradict the aſſertions of our adverſaries. Our conſtitution has never been ſtationary. It has been in a gradual ſtate of improvement; and a writer to whom this country had the honour of giving birth, I mean Hume, expreſſly tells us, that the hiſtory of England is little elſe "than a hiſtory of reverſals." Do we not know that acts of parliament are frequently ſet aſide, and others directly contrary paſſed in their ſtead? By the treaty of Troyes, after the battle of Agincourt, which was regularly ratified and confirmed, and no oppoſition made to it, either by France or England, the two kingdoms were for ever unrepealably united under Henry the V. Where is now the unrepealable union between England and France? Oaths were heaped upon oaths to bind the nobility of England never to violate any of the conſtitutions of Richard II. as Rapin aſſures us (vol. 1. p. 245) where are his conſtitutions now? During three ſucceſſive reigns, the national religion was three times ſucceſſively changed by act of parliament. A more complete tyranny cannot be conceived than what William the Conqueror eſtabliſhed over the people of England. Yet but a few reigns paſs away, and the barons eſtabliſh a legal right to redreſs their grievances by FORCE. Magna Charta ſays "*Diſtringent et gravabunt nos*," &c. The barons complaining, and failing of redreſs, ſhall *lawfully* diſtreſs and aggrieve the king all manner of ways, as by taking his caſtles, land poſſeſſions, &c. till redreſs is granted. After the Reſtoration comes the corporation act, and declares all reſiſtance unlawful. The ſame doctrine is preached in the act of attainder, and militia acts. Not thirty years after this comes the Revolution, and aboliſhes the whole ſyſtem of paſſive obedience and non-reſiſtance; ſends the whole royal family a-packing, and brings in the houſe of Naſſau. The liberty of the preſs was taken away by the 13th Charles II. The liberty of petitioning was aboliſhed the ſame year; and then the corporation charters were taken away. All theſe were reſtored by the Bill of Rights. Do not then, Gentlemen, theſe facts prove Mr. Hume's words, "That the hiſtory of "England is little better than a hiſtory of reverſals?" There are ſome men, I know, who ſee a ſpectre in every buſh. Lord Nottingham, when the Union was in agitation, declared that the changing of the term England to that of Great Britain would ſubvert all the laws of England; and in our own days there are of the ſame deſcription of men, of whom we may always ſay, that the word innovation, to uſe Mortimer's expreſſion, "has frozen up "their ſouls like fiſh in a pond." After all, the moſt uſeful diſcoveries in philoſophy, the moſt important changes in the moral hiſtory of man, have been innovations. The Revolution was an innovation; the Reformation was an innovation; Chriſtianity itſelf was an innovation.

Lord Juſtice Clerk. You would have been ſtopped long before this, if you had not been a ſtranger. All that you have been

ſaying

ſaying is Sedition; and now, my Lords, he is attacking Chriſtianity.

Lord Henderland. I allow him all the benefit of his defence; but to compare the preſent ſituation of this country, with what happened at the Revolution, when the forms of civil government, and the liberties of the ſubject were done away by the infringement of all law; or with that period, in which the ſovereign is ſaid to have forfeited his life! I cannot ſit here without obſerving, as was done in England, in the year 1745, when the rebels were tried; I cannot ſit here, as a judge and as a man, without ſaying, that is a moſt indecent defence. It is my duty to obſerve this; but I am for the pannel going on in his own way.

Mr. Gerrald. I conceive myſelf as vindicating the rights of Britons at large; and I ſolemnly diſclaim all intention of attacking Chriſtianity. I was merely ſtating the fact.

Lord Juſtice Clerk. Go on in your own way.

Mr. Gerrald. I think I may be allowed *that*, at leaſt.

Lord Juſtice Clerk. Go on, Sir.

Mr. Gerrald. I ſhould have been going on, if your Lordſhip had not interrupted me.

Gentlemen, the great charge againſt me is, that I came down here for the purpoſe of carrying on reform; and if I am not allowed to go into a vindication of theſe general principles, and an enumeration of particular abuſes, I may be *condemned* indeed, but I certainly am not heard. I was only arguing that the ſuppoſed principles charged upon me were ſuch as have been adopted by the beſt and wiſeſt of men; and if *they* can ſhew me, from higher authority, that they are unconſtitutional, I would inſtantly become a convert to their doctrines; but reaſon alone, and not aſſertion can convert *me*. I ſhall now endeavour to prove to you that our object was perfectly conſtitutional.

Gentlemen, by a return of the repreſentation in parliament, an object which we feel equally intereſted in with all other Britiſh ſubjects, given us by a ſociety called the Friends of the People, many of whom are members of parliament, and, among others, the illuſtrious Sheridan (the brilliancy of whoſe talents can only be equalled by his diſintereſted attachment to the liberties of his country) it appears that in England 2611 perſons return to parliament 327 members, and in Scotland 98 perſons elect 15, and the remaining 30 are elected by about 1400.

This is not an adequate repreſentation; but a mockery of repreſentation; and therefore not ſuch a repreſentation as the original principles of our conſtitution intended, or as the Revolution was meant to promote. Surely, Gentlemen, it is not the ſemblance of a parliament that we want, not the mere *name* of a parliament, the *magiſtratum vocabula*, as Tacitus well expreſſes it; but ſuch a parliament as ſhall preſerve our intereſts, and expreſs our wills. If the court's governing without a parliament was formerly the object of our terror; if its governing *with* a parlia-

ment is as juſtly the object of our wiſhes; its governing *by* a parliament is an infallible method, not only to compaſs, but give ſanction to our ruin. With regard to the firſt of theſe governments, our terrors have long ſlumbered; for, while we ſo fully give, why ſhould the ſovereign take? But if ever the period ſhould arrive, when the Houſe of Commons ſhould invariably anſwer to the calls of the crown, though they ſhould be deaf to the cries of the people; that they ſhould purchaſe on one hand, only to ſell on the other; that inſtead of redreſſing grievances they ſhould authoriſe them; inſtead of proſecuting malefactors, they ſhould ſcreen them; and inſtead of protecting and defending the rights of their conſtituents, they ſhould perfidiouſly betray them; if ever ſuch a period ſhould arrive, I ſay, we might ſtill amuſe ourſelves with the word conſtitution; but I hope itſelf would ſicken, as the conſtitution, in fact, muſt be every where undermined, and at the firſt ſound of the trumpet of deſpotiſm, like the walls of Jericho, would ſink into a heap of ruins.

Gentlemen, I was not drawing any parallel, when the bench interrupted me, between the ſtate of this country at this time, and the ſtate of it at the Revolution; but I was laying down a principle, that if perſons in any given period had a right to meet for the purpoſe of bettering their government, they had the ſame right at every ſubſequent period. The Revolution was carried into effect by open *force*, but here there was no idea of force, which, I truſt, I ſhall be able to prove. In our meetings there was no idea of any force at all, and therefore, inſtead of drawing a parallel between the ſituatiou of the country at that time, and at this, or of inculcating the propriety of having recourſe to force, we were doing directly the reverſe.

Gentlemen, I ſhall now briefly examine the principles, which the report of my ſpeeches in the convention attributes to me. It is there ſtated, that I ſaid "no meeting of the people can be "called a mob, if their deliberations be directed towards the "public good; but if men meet for an oppoſite purpoſe, for pro-"moting the miſery or the deſtruction of the human race, though "they ſit down with crowns on their heads and ſceptres in their "hands, they are truly a mob."

Theſe, gentlemen, I hold to be moral and ſelf-evident propoſitions; that it is not the *poſſeſſion*, but the *juſt exerciſe* of power, which ſhould render it an object of reverence among men; and that the eſſential principles of vice and virtue are not altered by the practices of perſons in high ſtations.—"*Amotâ juſtitiâ* "(ſays, St. Auſtin) *quid ſunt regna niſi magna latrocinia?*" "If "juſtice were laid aſide," as this venerable father has well ſaid, "the governments of the world would reſemble dens of robbers; "and men would follow only thoſe who can inflict the greateſt pu-"niſhments, or give the greateſt rewards." But ſince the reception of ſuch opinions would be the extirpation of all that can be called good, we muſt look for another rule of our obedience;

and

and we ſhall find that only to be the law, (I mean what Tully calls the *ſanctio recta*) which being founded upon that eternal principle of reaſon and truth, whence the rule of juſtice, which is ſacred and pure, ought to be deduced, and not from the depraved will of man, which fluctuating, according to the different intereſts, humours, and paſſions, that at ſeveral times reign in ſeveral nations, one day abrogates what had been enacted the other. This ſentiment, then, juſt and reaſonable in itſelf, can never be conſtrued into a reflection upon the preſent government; unleſs you ſuppoſe that which I never aſſerted, namely, that it *is applicable* to the preſent government; in which caſe you muſt commit the very offence which you are called upon to condemn, and attribute thoſe motives to the particular magiſtrates of our own country, which I only ſuppoſed might occaſionally influence the conduct of many.

I am next charged with ſaying "were all mankind to aſſemble "in public meetings, one of two things muſt follow; either they "will behave properly or improperly; if properly, their meeting "will tend to good, if improperly, it carries its own cure along "with it. The people will be ſoon brought into a better method "by a ſenſe of ſelf-preſervation, by which they will correct the errors into which they have fallen." Than this ſentiment, Gentlemen, I conceive nothing can be more innocent, or more ſtrictly and logically true. By the "aſſembly of the whole community" I certainly did not mean what a learned lord, in his argument on the relevancy, erroneouſly, I hope not intentionally, ſtated to be my meaning, the meeting of all the people in their collective capacity, which would impede buſineſs, and give riſe to tumults. No.—I meant the meeting of the people in their repreſentative capacity—but, ſuch a repreſentation as ſhould collect and expreſs their wills, as really and truly as if they had been aſſembled in their *collective* capacity. A fair, full, and complete repreſentation—not a deluſive viſion, an empty phantom, an unreal mockery. This I can alſo inform his Lordſhip was the only ſenſe conveyed by my words, "*the great art of government is, that all ſhould be governed by all*"—words, (which his Lordſhip thought proper to ridicule becauſe he did not underſtand them) and which, beſides their own intrinſic weight, have been adopted by wiſe and virtuous men, both in ancient and in modern times. "This, "therefore, (ſays Sir William Temple, when ſpeaking of the "conſtitution of the ancient Germans, from which our own is, "as we have ſeen, derived) is that conſtitution, which has "been celebrated as the trueſt and the juſteſt temper that has "ever been found out between dominion and liberty; and it "ſeems to be a ſtrain of what Heraclitus ſaid was the only ſkill, "or knowledge of any value in politics, which was *the ſecret of "governing all by all.*" (*Sir William Temple, Miſcellanies part* ii. *p.* 255.) Surely, if ever there was a principle of plain ſenſe, this

this is one: for who ſo likely to promote their own intereſt as the perſons moſt concerned in it? Who ſo eager to apply the cure, as thoſe who feel moſt acutely the ſmart of the diſorder?

Gentlemen, I am further charged with having ſaid, that "if "governments were to inſtruct the poor inſtead of hanging up "their bodies on gibbets, the voice of the people would then "be the voice of God." Now, what do theſe words amount to? Why, that ſince every government claims a *right* to puniſh, it is previouſly bound to inſtruct the ſubject in what he ſhould do to avoid it. For, as the juſt powers of government, as we have before had occaſion to obſerve, are derived from the people; ſo no people either will delegate, or can have a right to delegate, to any ſet of men, the power of wantonly inflicting pain upon them; which, undoubtedly, would be the caſe, if the ſubject could, without injuſtice, ſuffer the penalty of a law, even though he had not been previouſly told of its exiſtence. I ſpeak not now of thoſe moral laws which pure native intellect enables us to diſcover, and which may be read, as Dryden ſays, without the *ſpectacles of books*, but merely of thoſe poſitive regulations of ſociety which mere human intellect alone cannot know to be breaches of duty, unleſs previouſly inſtructed. In theſe caſes, then, to withhold inſtruction is, on the part of government, not merely the omiſſion of a duty, but the commiſſion of a crime; and ſociety ſins againſt the man before the man can ſin againſt ſociety. I therefore infer, that inſtruction alone can conſtitute a duty, and that laws can enforce no obedience but where they are explained. This, my Lords, is not factious doctrine, nor calculated to weaken the principle of obedience to the laws: they are preciſely the ſentiments of Sir William Blackſtone, a judge whoſe principles were moſt unqueſtionably loyal, and who makes exactly the ſame diſtinction as I have done, between the *mala prohibita*, and the *mala in ſe*; Blackſtone's Commentaries, Vol. iv. p. 8. between offences againſt the law of nature, and offences againſt the ſtate. The lawfulneſs of puniſhing criminals, ſays he, is founded upon this principle, that "*the law by which they ſuffer, was made by* "*their own conſent*; it is a part of the original contract into "which they have entered, when they firſt engaged in ſociety; "it was calculated for, and has long contributed to their own "ſecurity." Now, if the conſent of the puniſhed be the only lawful principle of authority on the part of the puniſher, that conſent muſt be either expreſs or implied: that it is an *expreſs* conſent, it can never be contended, and as to an *implied* conſent, we are ſtill authoriſed to aſk, what is the ground of the implication?

The publication of an act of parliament (the only mode of publication which government condeſcends to make uſe of) by the king's printer, only—in the old German character, which few men can read—and which is ſold at a price which as few can afford

ford to pay, rather reſembles the behaviour of Caligula, the Roman tyrant, who (according to Dion Caſſius) wrote his laws in a very ſmall character, and hung them up on high pillars, the more effectually to enſnare the people, than the conduct of a legiſlature, whoſe authority being founded on the *conſent of the people*, muſt, of courſe, *break their truſt*, whenever they violate the principle which created them. To read to the priſoner, for *the firſt time*, when he ſtands at the tribunal, any act, for the breach of which he is arraigned, is to him preciſely the ſame thing as it would be to originate it at the time by the ſame tribunal, for the expreſs purpoſe of condemnation. In ſuch caſe, indeed, he may periſh by the *forms*, but certainly not by the *principles* of juſtice. Sir William Blackſtone alſo regrets the frequency of capital puniſhments to be found in our code; and feelingly ſays, "that it is a melancholy truth, that among the "variety of actions which men are daily liable to commit, no "leſs than *one hundred and ſixty have been declared by act of par-* "*liament to be worthy of inſtant death*;" and adds, "that ſo "dreadful a liſt inſtead of diminiſhing, increaſes the number of "offenders."

Gentlemen, it was upon a painful review of this ſubject, that I aſſerted that "government would far better inſtruct the people "than hang up their bodies on gibbets;" for as there is ſomething in the nature of man, that diſdains to be terrified, ſo ſevere puniſhments have never been found effectual to prevent any ſort of crime. The moſt effectual way to prevent crimes is, to prevent the temptation; to take care that the people be educated in virtuous principles, and every man brought up and enured to labour and induſtry that has no eſtate to ſubſiſt on. If this be not done, laws may be avenged, but cannot be obeyed; they may inſpire terror, but can never command reſpect.

Gentlemen, I muſt obſerve, and I think it lies within the compaſs of my defence to ſtate to you, that we can only be innocent in coming down for the purpoſe of procuring reform, upon this ſuppoſition that reform was neceſſary; and if I had not been allowed to go into the proof of that fact, I ſhould ſtand in this melancholy ſituation—that a charge would be brought againſt me, and the only proper means of repelling that charge would be denied me.

Gentlemen, I now come to the diſſection of the evidence, which, I truſt, you will find to be ſo ſcanty and inſufficient, as that it is impoſſible to fix upon me any well-grounded and colourable charge of ſedition.

Gentlemen, the phantom conjured up to terrify the timid, the Meduſa's head which is to petrify you all with horror and aſtoniſhment, is the motion attributed to Mr. Sinclair, (which I ſhal ſhortly prove to you never paſſed) which not only inculcated the principle of reſiſtance, but which the Britiſh Convention, it is aſſerted, meant to carry into execution.

I was

I was not a little ſurpriſed to-day, to hear this legal and conſtitutional principle denied in round and unqualified terms; when it ſhould be recollected, that it is to this principle we owe our liberties. The right of ſelf-preſervation is a right of which no political inſtitution can diveſt us, ſince political inſtitutions themſelves were formed only the more completely to accompliſh that end. To ſupport any political inſtitution, therefore, by the deſtruction of that principle would be abſurdly to ſacrifice the end to the means. "If the laws of God and men (ſays Sydney) when "the magiſtracy is left at liberty to break them, and if the luſts "of thoſe who are too ſtrong for the tribunals of juſtice cannot "be otherwiſe reſtrained than by *ſedition*, tumults, and wars,— "thoſe ſeditions, tumults and wars, are juſtified by the laws of "God and man." Sydney on Government, p. 188. For as all magiſtrates were ſet up for the good of the people; ſo whenever they act contrary to the end of their inſtitution, they may be lawfully oppoſed: *Quia eatenus* (as Grotius well obſerves) *non habent imperium*. De Jure Belli, l. 1. c. 4. Here, then, Gentlemen, you ſee the principles of reſiſtance laid down by a writer on the civil law (with whoſe works their Lordſhips are poſſibly far better acquainted than I,) and recogniſed alſo by that ſage and hero the immortal Sydney, who, after a life ſpent in a continual ſtruggle againſt vice, tyranny, and faction, fell a martyr at laſt to the liberties of his country. The ſentence paſſed upon him, however, by the infamous Jeffries, has met with the unanimous execration of poſterity, and his attainder was accordingly reverſed among the firſt acts which took place at the Revolution.

Gentlemen, were I called upon to give a definition of ſedition or of rebellion, I would frankly avow, that I know of no other than this; *the conſpiracy of the few againſt the intereſts of the many*. And this rebellion may be equally carried on by thoſe who are entruſted with the power of the ſtate, as by thoſe who originally conferred it, and who are the objects of its exerciſe. "If thoſe who by force take away the legiſlature," ſays Locke, "are *rebels*, the *legiſlators themſelves*, as has been ſhewn, can be "no leſs eſteemed ſo, when they who were ſet up for the pro"tection and preſervation of the people, their liberties and pro"perties, ſhall invade and endeavour to take them away; and "ſo they, putting themſelves in a ſtate of war with thoſe "who made them the protectors and guardians of their peace, "ARE PROPERLY, AND WITH THE GREATEST AGGRAVATION "REBELS." Treatiſe on Government, octavo edition, p. 294-5.

This principle of reſiſtance, Gentlemen, is deeply interwoven in our conſtitution, and is as ſtrongly laid down, even by writers on our municipal law, as it is by thoſe who are philoſophical and ſpeculative. "The liberties of Engliſhmen (ſays Blackſtone, Vol. I. p. 144,) "ſhould be perfectly known and conſi-

" dered by every man of rank and property, leſt his ignorance of " the points whereon they are founded ſhould hurry him into " faction and licentiouſneſs on the one hand, or a puſillanimous " indifference and *criminal ſubmiſſion on the other.*" Nor do I apprehend that this knowledge of the rights of Britons, is to be limited merely to men of rank and property, ſince the poor man is, and by the ſame means too, equally entitled to the preſervation of his *mite*, as the rich man to the enjoyment of his millions. And, of this opinion alſo ſeems to be the learned judge, when ſhortly after, he ſays, " to vindicate theſe rights, when actually violated " or attacked, the *ſubjects of England* are entitled, in the firſt " place," (the word ſubjects is certainly equally applicable to all deſcriptions, high and low, rich and poor,) " to the regular " adminiſtration and free courſe of juſtice in the courts of law; " next, to the right of petitioning the king and parliament for " redreſs of grievances; and laſtly, to THE RIGHT OF HAVING " AND USING ARMS FOR SELF-PRESERVATION AND DEFENCE." Vol. I. p. 144. Thus you ſee, Gentlemen, that theſe principles are neither new nor dangerous; not new, becauſe co-eval with the Revolution; not dangerous, becauſe avowed by a calm philoſophical writer who enjoyed the favour and patronage of his ſovereign, and ſince ſupported by the authority of an eminent writer, whoſe office it was to lay down the principles of law, and adminiſter juſtice to the ſubjects of theſe realms.

Gentlemen, I defy our bittereſt enemies to prove that it was ever our intention to make any practical application of theſe doctrines; for, as the ſame learned judge well obſerves, " all op- " preſſions, as they may happen to ſpring from any branch of the " ſovereign power, muſt neceſſarily be out of the reach of any " *ſtated rule*, or *expreſs legal* proviſion;" ſo I ſay with him alſo, that " if ever they unfortunately happen, the *prudence of the times* " *muſt provide new remedies upon new emergencies.*" Blackſtone, Vol. I. p. 245.

Gentlemen, I ſhall now ſtate to you, as ſhortly as I can, what was ſaid by the witneſſes. Mr. Scott ſays, I think, among other things, that when he came into the convention, on the 6th of December, he aſked the chairman the object of our meeting. The reply was, that we were met for the purpoſe of addreſſing the king.

Mr. Davidſon tells you, indeed, that he came for the purpoſe of diſperſing the meeting. He was aſked alſo, if there was any appearance of tumult? He anſwers in the negative, that there was no appearance of tumult and diſorder, though the preſident was forcibly taken out of the chair, to whom he at firſt gave a friendly ſhake, though he was afterwards obliged to convert it into a Corniſh hug. Was, then, gentlemen, were the perſons who were forcibly aſſaulted, but we did not make uſe of force for the purpoſe of repelling force.

Gentlemen, the external proofs that have been alledged, particularly of this reſolution which was ſaid to have paſſed, amount

to what? They amount, in fact, merely to this, that a number of papers were taken from a public inn by the officer, and put into a looſe bundle; then taken by him to the ſheriff's office, where they were left for ſome time, without any particular attention being paid to them; certainly in ſo looſe a ſtate, that it was very poſſible for any other papers to have been put in; conſequently all degree of credibility due to the evidence is done away, inaſmuch as they were not ſealed, though I underſtand it is always the cuſtom to ſeal up papers, as it appeared from the evidence delivered to-day at the bar. For I conceive that after they had been in that looſe ſtate, it is impoſſible ever to identify theſe papers, unleſs the man has the faculty of looking through a pocket handkerchief. How is it poſſible, if the papers had been taken and put into a looſe bundle, and ſuffered to lie a conſiderable time without any actual inſpection, and ſeveral perſons being in the room; how is it poſſible, I ſay, that theſe papers can be proved to be the ſame that were taken out of the room of Mr. Sinclair?

Gentlemen, you will find one material circumſtance, however, to which, I truſt, you will give your moſt mature conſideration, which is, that an attempt to identify thoſe papers ſhould, by all regular and due courſe of evidence, have been made before they are produced to the jury, as the ground of criminating any pannel at this bar; for if they are not identified, I do not ſee with what colour of juſtice they can be brought forward for the purpoſe of criminating any perſon. This paper is not proved ever to have been adopted as a reſolution by the convention. It no where appears, even in what is called the minutes of the convention, but which I deny to be the minutes of the convention; nor is there any proof that ever they were adopted by the convention *as* their minutes. It ought to have been proved to be in the hand-writing of Mr. Sinclair, who is the reputed author of this motion; and even if an attempt to identify his hand-writing had been made, even then I ſay the evidence would ſtill have reſted upon a very precarious foundation. In the caſe of Algernon Sydney, it was a ſimilarity of hand-writing that was the principal ground of his conviction. That very circumſtance alſo, Gentlemen, is recited in the act of parliament as one of the principal grounds of reverſing his attainder; though the paper alluded to was found in the cloſet of Colonel Sydney, as this paper is ſaid to have been found in the room of Mr. Sinclair. Sydney himſelf well obſerves, upon his trial, "that ſimilitude "of hands is nothing, as hands may be ſo counterfeited, that "no man ſhall know even his own hand. A gentleman that is "now dead," ſays he, "told me that my Lord Arlington, about "five years ago, deſired him to write a letter and ſeal it as well "as he could. He wrote it with care, and ſealed it with a wafer, "and wax upon it; and within a few days my Lord Arlington "brought him five letters, and he did not know which was his "own".

"own." Trial of A. Syd. p. 31. If then, Gentlemen, even if there had been actual proof that this was in the hand-writing of Mr. Sinclair (a circumſtance which never could be proved, and which has not this day been attempted to be proved,) if ſuch actual proof, I ſay, would not have been admitted as ſufficient evidence to criminate Mr. Sinclair, inaſmuch as the motion in queſtion never became part of the minutes of the convention—far leſs ſhould this ſcroll of paper condemn me, who am only accuſed of verbally ſupporting the *written* motion which Mr. Sinclair is ſaid to have made. If upon the trial of this excellent young man, who, at a period of life which the greater part of mankind conſume in frivolous or vicious diſſipation, is dedicating his whole time to promote the happineſs of his fellow-creatures; if upon a ſubſequent trial an honeſt and impartial jury ſhall, as they muſt, acquit him of the charge, both upon a general conviction of his innocence, and particularly upon the inſufficiency of the evidence brought againſt him, what muſt be the remorſe, what the anguiſh of that jury, who ſhall have condemned the acceſſary upon that very evidence, which, on the fulleſt inveſtigation, ſhall have been found incompetent to the conviction of the principal! This event, were it poſſible to happen, I ſhould moſt deeply deplore, not merely on account of my own perſonal ſufferings, but for the ſcandal it would affix to the adminiſtration of juſtice, for the diſgrace it would bring upon our common country; and, above all, for the deep and laſting infamy that it would entail upon you, my countrymen, gentlemen of the jury. In ſuch caſe, the principle of my condemnation would even be worſe than that of Sydney; poſterity would review it with equal abhorrence, and therefore let me conjure you, as you tender not only *my ſafety*, but your own *perſonal reputation*, ſuffer not the iniquities of *thoſe* times to be revived and imputed to theſe.

Mr. Mack tells you, that he did not get the papers from Lyon, that they were lying in the room in the ſheriff-clerk's office careleſsly. Mr. Skirving's papers were ſealed, it ſeems, but this motion upon which the great ground of criminality is laid, is ſuffered to lie looſe. If that precaution was not taken equally in all caſes, I certainly ought not to ſuffer for the negligence of the officer.

There is one certain and infallible proof, Gentlemen, that this motion, upon which ſo much ſtreſs is laid, never did, in reality, paſs in the convention. It has come out in evidence, that the motion was marked by Mr. Aitcheſon—if then it was marked by him, it clearly could not have been adopted by the convention; for if it had, it would have gone into the hands of the Secretary, who would have marked it with his own ſignature, and it would have conſtituted part of the minutes. On the contrary, you have ſtrong circumſtantial proof (the beſt that the nature of the caſe will admit) that ſo far from paſſing in the

convention, it was even laid aſide; inaſmuch as it was only marked by Aitcheſon, and not by the ſecretary, whoſe practice it was invariably to mark them as an eſſential preparative to their inſertion in the minutes. Beſides, Gentlemen, where was this paper found? Was it found in the poſſeſſion of Mr. Skirving, when *all* his papers were ſeized, and to whoſe cuſtody all reſolutions that paſſed in the convention were regularly committed? No; it was not even pretended to have been ſo found; it is ſtated to have been found in the cuſtody of Mr. Sinclair alone, who was a ſimple member of the convention, and who was never entruſted with the guardianſhip of its minutes. This ſingle fact renders all reaſoning upon the ſubject unneceſſary. It amounts to a moral demonſtration of what I advance; and he who would not be convinced by proof ſo glaring, and facts ſo undeniable, would not receive *conviction though one ſhould ariſe from the dead.*

Gentlemen, you, no doubt, are well aware, that it is the duty of jurymen to find the verdict *ſecundum allegata et probata, according to facts alledged and proved.* Many principles contained in thoſe ſpeeches attributed to me I glory in having uttered, as they are perfectly reconcileable with the ſoundeſt principles of government and good order. But there are parts of thoſe ſpeeches which are falſe and ſpurious. Animated, as I am, with a love of truth, and determined to tell it at whatever hazard, I will neither aſſume what I *have not* ſaid, nor deny what I *have ſaid.* If then, you give me credit, which, I am ſure, as honeſt men you cannot withhold from me, for my veracity and openneſs in one inſtance, you have no right to miſtruſt me in another.

I have already told you, that as jurymen you are bound to find a verdict according to facts alledged and proved. I now, Gentlemen, will ſeriouſly aſk what evidence have you, that the ſpeeches charged in the indictment, and which are copied from the Gazetteer, are the real ſpeeches which I made in the convention? What is the mode of proof? Thomas Cockburn tells you that he had a *general* recollection, when he was in the habit of reading the Gazetteer, that they bore a reſemblance to the ſpeeches which he has heard me make in the convention. Gentlemen, I truſt you are well aware of the ſacred duty which you are now to execute, and that you will be of opinion, that in a caſe ſo ſolemn as the preſent, a bare general recollection of what is ſaid, or ſuppoſed to be ſaid, in the heat of debate, will never conſtitute a ſufficient ground of criminal conviction. I allow, that in the ordinary intercourſes of life a general recollection is certainly ſufficient ground whereon to form a judgement, otherwiſe human affairs *muſt* ſtand ſtill. But you are not now met for the ordinary purpoſes of life, you are met to determine the guilt or innocence of a man accuſed, on the one hand, of having diſturbed the peace, and eſteemed on the other, for having attempted to promote the good of his country; and upon your determination will reſt, not only his fortune and his fame, but, in all probability,

his

his life itſelf. What then is the evidence upon which this great ſtake depends? Mr. Cockburn, when preſſed by my counſel, who, through the whole courſe of the cauſe have conducted themſelves, not only like able counſel, but like firm and inflexible patriots, ſays, that he cannot identify one ſingle paſſage. What does this confeſſion amount to? That he cannot ſwear they are the ſpeeches I made; for, if the terms general recollection have any meaning at all, I apprehend they have this meaning, that all general recollections are compoſed of the recollection of ſome *particular* paſſages. Now, he does not identify one ſingle paſſage. Some of them you may deem criminal, and others innocent; nay, even meritorious; and, therefore, I preſume you cannot convict any pannel upon ſuch looſe indeterminate evidence; which is, at leaſt, as likely to fix upon him what is praiſe-worthy, as it is to charge him with what is criminal. But he recollects "a great "many words interſperſed in that ſpeech." Why, doubtleſs, Gentlemen, when Mr. Cockburn had heard any perſon ſpeak for a conſiderable length of time, he muſt have ſome recollection upon his mind of what had paſſed; but I truſt that words interſperſed through a ſpeech are certainly too looſe to found a verdict of conviction of a far leſs crime than that of which I am accuſed, and to authorize a puniſhment of far leſs ſeverity than ſuch as if convicted I ſhall inevitably ſuffer.

This, Gentlemen, is ſo far as concerns the firſt ſpeech. But of the ſecond ſpeech he ſays he recollects leſs than of any other; though this is the ſpeech upon which Mr. Solicitor General chiefly founds his charge, and againſt which he has planted the whole artillery of the law. After all, Gentlemen, the witneſs, though cloſely preſſed in his examination by the crown lawyers, cloſes his evidence with theſe remarkable words, "*that he does not mean to identify any of the ſpeeches.*"

Gentlemen, if the freedom and lives of Britiſh ſubjects are dependent upon the looſe and general recollection of words ſpoken too at a conſiderable diſtance of time, we may, indeed *boaſt* our liberties and the benignity of our laws, but they are merely an *empty boaſt*, and not a ſolid and ſubſtantial good.

But, Gentlemen, there is one circumſtance ſtill ſtronger than any I have ſtated to you. If any perſon might be ſuppoſed to retain an accurate recollection of the ſpeeches, it muſt be William Roſs, who being able to write ſhort-hand, would in all probability carry away with him, with more accuracy than any other perſon, the ſpeeches which are attributed to me. Roſs tells you, he never took notes by the expreſs direction of the convention, nor ever publiſhed them by their order. Now, if charges of criminality are to be brought forward againſt men upon ſuch looſe evidence as this—the unauthoriſed tranſcript of a ſhort-hand writer, and which tranſcript, or even verbal evidence, is to be taken as proof---we muſt deem the judicial proceſs of our country not a ſhield of protection, but a rod of chaſtiſement. Perſons actuated

by malicious motives, the retainers of a profligate adminiſtration, may enter the meetings with a ſhort-hand writer, and, for a ſmall gratification, may induce him to take down, as the ſpeeches of any member, words highly criminal, but which at the ſame time have never been ſpoken; and afterwards, by procuring them to be inſerted in a newſpaper, may ſubject the party to a ſtate proſecution. Againſt this engine of perſecution what remedy has innocence? Why, the party aggrieved may proſecute the printer for a libel, I mean if he has money, for that is a neceſſary ingredient to the attainment of juſtice; and if he has none, however deep the injury, and calamitous its conſequence, he muſt ſit down ſilent under the charge, until he has an opportunity of vindicating his innocence in court, when the Lord Advocate, who is, *ex officio*, the guardian of our liberties, ſhall be graciouſly pleaſed to drag him forth as the ill-fated victim of a ſtate proſecution.

Gentlemen, the rules of evidence, being all founded upon the plain principles of common ſenſe, muſt in all countries be nearly the ſame. In an Engliſh Court of Judicature, the evidence produced againſt me would, I am certain, be deemed incompetent to a conviction on the ſlighteſt charge. Why then in Scotland ſhould not an equal meaſure of juſtice be meted out to me, an Engliſhman, which you, though Scotſmen, would in England readily obtain?

Furthermore, Roſs the ſhort-hand writer ſwears that he is not very well ſkilled in his art—which, even in the moſt ſkilful, is a fallacious mode of identifying a ſpeech—nay, that he was afflicted with deafneſs when he attended the convention, and, having frequently loſt the thread of my diſcourſe, inſerted of his *own invention*, a great part of that which appeared in his paper. Gentlemen, is not this ſingle confeſſion ſufficient totally to deſtroy the identity of the ſpeeches, and conſequently the ſolidity of the evidence againſt me?---A queſtion was aſked by one of the jurymen which carried with it an apparent weight---whether any of the members of the convention had complained that their ſpeeches were inſerted or miſrepreſented? To which Roſs anſwered, No. I am ſure you cannot but be aware, that if the members of the convention had been in the conſtant habit of complaining of all the miſrepreſentations which the lying breath of rumour had circulated againſt them---if they had thought it neceſſary formally to contradict whatever malice propagated and credulity received---the object of their miſſion muſt have been entirely abandoned; and inſtead of aſſerting thoſe principles which we felt to be juſt, our time would have been conſumed in refuting aſperſions which we knew to be falſe. No! Gentlemen, we reſted upon the conſciouſneſs of our innocence, and upon the broad baſis of public confidence, to which our honeſt and diſintereſted exertions had given us a claim.

George Roſs depones, that I had no knowledge of the inſertion of the words *Ca ira*, *Vive la Convention*, *Liberty Hall*, &c. but that

that he himſelf was the perſon who inſerted them. I ſhould not have repeated this inſignificant circumſtance, but that I obſerve unfair inferences have been drawn from it, in order to load us with additional guilt.

Gentlemen, I hold this to be a ſound principle both of reaſon and of law, that if you once can prove that any meeting was in itſelf legal, though after the meeting any illegal reſolutions were adopted, provided it cannot be proved that you were preſent at thoſe meetings aiding and abetting thoſe illegal reſolutions ſo paſſed, no degree of criminality can poſſibly attach to you.

You are then to advert to the general principle which proves the legality of the meeting, and not to the particular reſolution which if you did not ſupport can never be brought in evidence againſt you. Much ſtreſs had been laid upon this committee of ſecrecy, upon which very ſtrange and contradictory language has been held by the public proſecutor. Sometimes we are repreſented as a ſet of deſperadoes, who met in open day for the purpoſe of violating the laws and the ſubſiſting conſtitution of the country; at other times that we met in holes and corners, as our projects were ſo nefarious that they could not bear the light. To round the circle of contradictions, a learned judge upon the bench has declared, that "however criminal our intentions, our conduct was "open, and in this reſpect our imprudence was equal to our "guilt." By theſe various and even oppoſite charges, the puniſhment inflicted by the Sicilian tyrant is realized upon the unfortunate members of the convention---ſtretched upon the iron bed of legal torture, if too long we are lopt, if too ſhort we are ſtretched. If we act with openneſs, then is our candor audacious guilt; if ſecretly, we only refrain from inſulting our country by the publicity of our meaſures, that we may in greater ſecurity accompliſh her ruin. Seven men, it ſeems, were deemed ſufficient, by this reſolution, to conſtitute a convention, which was to overturn the government. Abſurd and impoſſible ſuppoſition! Were our rebellious troops, like thoſe of Mr. Bayes, at Brentford, to ſtart up when called for? Or, is it ſuppoſed that we were to realize the fable of Pyrrha and Deucalion, and generate men by caſting ſtones behind us? The very ſuppoſition of your giving the ſmalleſt degree of credit to this abſurd allegation, would reflect ſuch diſgrace upon *your* underſtandings, and is ſo highly derogatory to the Britiſh Conſtitution, the principles of which are the objects of univerſal reverence, that I cannot entertain it for a moment. For feeble, indeed, muſt the foundation of that conſtitution be, which can be even endangered, far leſs overturned, by a meeting of no more than ſeven individuals!

Gentlemen, from a particular expreſſion ſtated in this indictment, *calamitous circumſtances*, you muſt ſee that we looked upon every invaſion to be calamitous, from whatever quarter it proceeded;--but, if we had intended to make an open oppoſition to the laws of our country, or were plotting its deſtruction ſecretly and

in

to the dark, we ſhould, certainly, never have uſed an epithet of that deſcription. The very inſertion of the term calamitous proves to a moral demonſtration that all invaſions, from whatever quarter, would have been deemed objects not of approbation, but of regret.

Gentlemen, it has been ſaid, that the admiſſion of foreign troops into Great Britain was alſo one of the calamitous circumſtances which would induce the convention to meet again. To this charge, if it will avail any thing to the public proſecutor, I freely plead guilty. As a Briton, I ſhall ever think myſelf bound to watch with anxious attention the introduction of any foreign troops, and upon this plain principle, that I conceive the native valour of Britons is always adequate to their own protection. If it be otherwiſe, we hold our freedom by the moſt brittle tenure —for as foreigners can have no common intereſt with Britons, the ſame mercenary arm which protects us for pay, may enſlave us for plunder. But what does this reſolution ſtate? That we will do any thing *unconſtitutional*? Far from it. It ſtates that "we ſhall follow the wholeſome example of our anceſtors, by "paying no regard to any act which ſhall militate *againſt* the "conſtitution of our country." Now, before government can properly make this reſolution a ground of criminal accuſation againſt us, they muſt confeſs that they either had paſſed, or meaned to paſs an act, *militating againſt the conſtitution*. For under no other circumſtance was any oppoſition mentioned, or intended. Is it not rather ſingular then, that before they can infer *our* guilt, they muſt confeſs *their own*? Acts of parliament are in general ſacred things, but they may be, in *particular caſes*, ſo grievous and oppreſſive, that human nature will revolt from them. The conſtitution, as Treaſurer Burleigh long ſince obſerved, can never be undone but by a parliament; which proves however, that a parliament *may* undo it. In the reign of Henry VIII. an act of parliament was paſſed, giving to the proclamations of the crown the validity of a law. It was alſo made a capital offence for any perſon to foretel the death of the king—in conſequence of which, Sir Anthony Denny, his phyſician, when he lay at the point of death, was afraid to mention to him the danger of his ſituation. To judge or *believe* that Anne Cleves was not a virgin when ſhe married him, was declared high treaſon. Until very lately for a gipſy to remain twelve months within the kingdom was declared felony without benefit of clergy. In Scotland, Evenus, the third king of that name, cauſed a law to paſs, by which the wives and daughters of noblemen were expoſed to his luſt, and thoſe of the commons to the luſt of his nobility. *Tulit legem Evenus ut cuivis liceret, pro opibus quot alere poſſet, uxores ducere; ut rex ante nuptias ſponſarum nobilium, nobilis plebeiarum prælibarent pudicitiam, ut plebeiorum uxores cum nobilitate communes eſſent*, BUCH l. 4. c. 14. Many other acts might be mentioned which have long blotted and diſgraced the ſtatute book; are theſe acts, then, in the

eye

eye of reaſon, proper objects of obedience? Nay, are they not rather honoured in the breach, than the obſervance? "Laws," ſays Hooker, "muſt be obeyed, *unleſs there be reaſon ſhowed that the "law of reaſon or of God doth enjoin the contrary.*" ECCLES. POL. B. 1. ſec. 16. Which plainly implies that there are bounds to the civil obedience of the ſubject. Acts of parliament, then, which are ſubverſive of our happineſs, are contrary to every right of civil ſociety and comfort, utterly incompatible with all laws either moral or revealed, and therefore mere acts of power, having neither the force nor obligation of a law. But I deny that it was ever the intention of the Convention to reſiſt any acts by *force*. The words of the reſolution are, "unleſs compelled to deſiſt by ſuperior force. What was this force to be ſuperior to? Why, forſooth, to twenty-one members peaceably met, and peaceably diſcuſſing political ſubjects. Nay, do not the very words themſelves plainly import, that though the mere *mandate* of the magiſtrate (as ſuch a mandate would be a groſs violation of the law which he was bound to obſerve) would be diſregarded by the Convention, yet the appearance of *force* would be the ſignal of diſperſion? For upon what principle of common ſenſe, or probability, can it be ſuppoſed that we ſhould have wantonly expoſed our lives to certain deſtruction by an appeal to arms? we, few in number, peaceful in intention, without ability to act, without hope to ſucceed, without power, without influence, without motive, without means.

But the ſincerity of this declaration has been already evinced by a fact of recent date and public notoriety. When Mr. Sheriff Davidſon, on the laſt evening on which the Convention ſat, entered the hall, attended by conſtables and other officers, belonging to the *civil* power only, did the ſlighteſt ſymptom appear of an inclination to reſiſt? No; Mr. Margarot and myſelf, who ſucceſſively acted as preſidents that evening, were indeed forcibly pulled out of the chair; becauſe, as we were conſcious, that we could not be *legally* ordered to quit it, a voluntary abdication would have been juſtly interpreted as a dereliction of our right. But did we reſiſt, I again repeat? No; Mr. Davidſon's teſtimony this day has confirmed my aſſertion. We diſperſed, he tells you, without tumult or diſorder. It was we, then, againſt whom force was employed, but who employed none. We *ſuffered* injury but *offered* none.

The introduction of foreign troops into the kingdom, *without the ſanction of parliament*, is an infringement on the Bill of Rights, and a violation of the conſtitution of our country. Doctrines, I know, have been openly avowed by the miniſter, juſtifying the meaſure as legal and conſtitutional; but this avowal, I believe, ſtruck every one who heard him, his own creatures excepted, with horror and aſtoniſhment; nor do I apprehend, that at a future though not diſtant period, he will be fond of repeating what in the plenitude and inſolence of power he has lately advanced.

Lord Stanhope, who is a member of that legiſlature which ought to be the peculiar guardian of our rights and privileges, and who, I believe, is as incorrupt a ſenator as ever this country gave birth to, ſince, like another Socrates at Athens, he preſerves himſelf free from the contagion which is every where raging around him; Lord Stanhope, I ſay, with his accuſtomed honeſt daring thus expreſſed himſelf upon the ſubject of which I am now ſpeaking: "Armies (ſaid he) have in all ages been the engines of tyranny, and by them the civil rights and liberties of all nations have been deſtroyed. The meaſure is of itſelf ſuch a flagrant violation of the conſtitution, that if the ſame arguments are uſed in ſupport of it in this Houſe which have been uſed in another place, I make no difficulty in declaring that the authors and abettors of ſuch blaſphemous doctrines *ought not to ſurvive their treaſon.* I feel (continued he) as little difficulty in declaring that IF THOSE TREASONABLE DOCTRINES ARE ATTEMPTED TO BE PUT INTO EXECUTION BY THE EXECUTIVE GOVERNMENT, IT THEN BECOMES THE DUTY OF THE PEOPLE TO RESIST FORCE BY FORCE." If then this excellent man could hold with impunity in the ſenate itſelf, and in the preſence of the great officers of ſtate, theſe bold but conſtitutional doctrines, upon what pretext of law, or under what colour of juſtice can you preſume to puniſh me, who have merely ſtated *hypothetically*, what he has advanced, plainly, openly, unconditionally?

Gentlemen, I cannot but obſerve one very unfair ſuſpicion which the crown lawyers have endeavoured to infuſe into your minds during the courſe of theſe trials. In order to inflame your paſſions, at the ſame time that they may aſſume to themſelves an *appearance* of lenity, they tell you that the crimes with which we ſtand charged approach very nearly to high treaſon; and an appeal, not very honourable I think to the appellants, is continually made to old and obſolete ſtatutes, on which ſtate proſecutions were grounded when tyranny was at its height, to prove, that had we fallen, like the apoſtles of freedom, in the laſt century, on thoſe "evil days," like them too we ſhould have been the victims of a legal tyranny. This procedure I muſt conſider as abhorrent, from the cool and ſober rules of juſtice. Suffer not, therefore, I conjure you, your tempers to be inflamed, to the deſtruction of an innocent man, becauſe the public proſecutor, in the rage and phrenzy of loyalty, has thought proper to dig into the duſty rubbiſh of antiquity, under which the embers of deſpotiſm have long been ſmothered, and to "awaken thoſe ſleeping "lions, by rattling up a company of old records which have lain "for ſo many ages by the wall neglected and forgotten."*

Gentlemen, another circumſtance, upon which much ſtreſs has been laid, is that of a blank appearing among the minutes; and

* See Lord Strafford's Speech in the State Trials.

as this blank followed after the reſolution which we have juſt now been diſcuſſing, it has been unfairly inferred, that it was our intention to fill it up with matter, at a proper and convenient ſeaſon, the publication of which would have amounted to high treaſon. But, Gentlemen, if you will turn to the minutes, you will find that there is not one blank alone, but many. And this circumſtance, when coupled with the obſervation of the Solicitor General, muſt convince you how extremely dangerous it is to condemn any man upon the evidence of theſe minutes, which have been ſo long in poſſeſſion of thoſe who are the officers and dependents of government. For, as ſtate proſecutions are frequently the inſtruments by which a profligate adminiſtration ſacrifice the bold and incorruptible expoſers of their meaſures, ſo it is always in the power, as no doubt it muſt be frequently in the inclination of the public proſecutor, to fill up the blanks with more heavy and additional matter, which being confounded with the original minutes, may be offered in evidence to a jury, as a ſufficient ground of conviction for high treaſon.

The difference of proceſs, and of the criminal codes of Scotland and England muſt, to every thinking mind, be a ſubject of moſt ſerious alarm. In the ſouthern parts of the kingdom, nay, in the capital itſelf, the ſeat of the legiſlature, and the fountain head of all juſtice! men are ſuffered to meet under the very beard of the Secretary of State, and to paſs with impunity reſolutions exactly correſponding in principle, and equally ſtrong in expreſſion with thoſe, which, if paſſed in Scotland, will ſend both the mover and ſeconder, in company with thieves, felons, and murderers, to toil and periſh on the bleak and inhoſpitable ſhores of New Holland. Is the Tweed then, which the God of nature has made only to be a geographical ſeparation between the two countries, by the folly and wickedneſs of man to be perverted into a legal, a moral, a political ſeparation? The reſolution to which I have juſt now alluded, was a reſolution paſſed by the London Correſponding Society, and is as follows: "That during the enſuing ſeſſion of parliament, the general committee of this ſociety "do meet daily, for the purpoſe of watching the proceedings of the "parliament, and of the adminiſtration of the government of this "country. And that upon the firſt introduction of any bill, or "motion inimical to the liberties of the people, ſuch as for "LANDING FOREIGN TROOPS IN GREAT BRITAIN OR IRELAND, "for repealing the HABEAS CORPUS ACT, for proclaiming "MARTIAL LAW; OR FOR PREVENTING THE PEOPLE FROM "MEETING IN SOCIETIES FOR CONSTITUTIONAL INFORMA-"TION, OR ANY OTHER INNOVATION of a ſimilar nature; that "on any of theſe emergencies, the general committee ſhall iſſue "ſummonſes to the delegates of each diviſion, and alſo to the ſe-"cretaries of the different ſocieties affiliated and correſponding "with this ſociety, forthwith to call a GENERAL CONVENTION "OF THE PEOPLE, to be held at ſuch place, and in ſuch a manner

" as ſhall be ſpecified in the ſummons, for the purpoſe of taking " ſuch meaſures into their conſideration.

" Reſolved, That the preceding addreſs and reſolution be ſigned " by the chairman, and printed and publiſhed. J. MARTIN, " *Chairman.* T. HARDY, *Secretary.*

Upon theſe reſolutions, though circulated throughout the united kingdoms, no proſecution has been grounded. Are we not then to infer, either that the Secretary of State has been criminally negligent of his duty, and that though he cruſhes ſedition in Scotland, he tolerates it in England; or, for upon no other principle can he be excuſed, that the reſolutions and the publication of them are perfectly harmleſs, and that the code of Scotland which marks them out as objects of puniſhment, like that of Draco, is written in blood.

Gentlemen, during my trial a principle has been laid down by the Lord Juſtice Clerk, which I deem to be, in the higheſt degree reprehenſible, as it ſtrikes at the root of that confidence which all men ſhould repoſe in law, and of that ſecurity which all men have a right to expect from it. The Lord Juſtice Clerk declared that the judges had a *diſcretionary* power in annexing the puniſhment to the particular crime of ſedition. Had a judge in England held a ſimilar doctrine, the judgement ſeat would have tottered under him. If law be a certain rule of action, defining the offence and annexing the puniſhment, the degree and nature of the puniſhment ſhould be ſpecified with equal preciſion as the degree and nature of the offence; otherwiſe we hold our freedom as mere *tenants at the will* of a judge, and not as we ought, by the known and explicit declaration of the laws. Lord Camden, the firſt law authority in England, has ſaid, that "DISCRETION IS " THE LAW of tyrants; in the beſt men it is caprice, in the worſt " it is every folly, vice, and infirmity, to which human nature is " liable."

Gentlemen, let not the word *diſcretion* miſlead you. *Legal diſcretion* is not the *arbitrary* diſcretion of the judge. No; it is as well defined by Lord Coke, *diſcernere per legem quid ſit juſtum*, " to diſcover through the medium of the law that which is juſt " and proper."—" Judges muſt determine," (ſays the preamble to an old ſtatute of Henry VII.) " not by the crooked cord of " diſcretion, but by the golden met-wand of the law." A beautiful expreſſion, and full of intrinſic of wiſdom.

" *Miſera eſt ſervitus*, (ſays Lord Coke,) *ubi jus vagum atque* " *incognitum eſt:* wherever the law is vague and uncertain, the " people are in a ſtate of wretched ſlavery." And that law is certainly vague and uncertain, which, not ſpecifying the puniſhment as well as the crime, leaves it to the arbitrary diſcretion of the judge.

Gentlemen, my feelings, my exertions, and my ſtate of health have exhauſted me.

Lord Henderland. You may ſit down, Mr. Gerrald, and take a little breath.

Mr. Gerrald. I thank your Lordſhip.

(Mr. Gerrald having reſted a few minutes, proceeded as follows:)

Gentlemen, I truſt that I have now proved to your conviction the general purity of my intention, of which the object was to carry into execution, a conſtitutional reform in a peaceful manner; that however we may differ as men and citizens upon ſpeculative principles of government, yet the doctrines which I have advanced are founded upon the great and immutable principles of reaſon and of truth; that they are the ſentiments of the moſt revered writers, Locke, Sydney, Jones—that even Mr. Pitt and the Duke of Richmond formerly *profeſſed* to act upon them; that they are perfectly congenial to the ſpirit of the Anglo-Saxon government, and not in a great degree differing from the principles of the old conſtitution of Scotland, as Dr. Stewart has proved to you; that our peaceful reſolution of obtaining a reform was never violated by our practice, as the teſtimony of Sheriff Davidſon evinces; for when aſſailed by the civil power, we repelled not force *by* force—that the officers of the law violated the law in their illegal aſſault upon our perſons; and that even *then* ſuch was our deſire to preſerve the public peace, that we choſe rather to *ſuffer* than to *act*; though we could have acted under the ſhelter of thoſe laws which we are falſely charged with having a deſign to ſubvert.

As men whoſe rights and ſecurity are interwoven with our own; advert, I beſeech you, to the circumſtances of our diſperſion. The firſt magiſtrate in this city, attended by a poſſe of conſtables, enters the convention hall, when the members who compoſed that convention were aſſembled upon a legal principle, for a conſtitutional purpoſe, and conducting themſelves in a calm and peaceful manner. Without reading the riot act, for which, indeed, he could have no pretext, from the object and conduct of the meeting, he forcibly drags the preſident from the chair, and diſperſes the convention. At a future day, when a meeting is adverti ſed to take place, not as the BRITISH CONVENTION, but of THE FRIENDS OF THE PEOPLE, the magiſtrates of Edinburgh, attended by the town guard, block up the paſſage to the houſe which we had hired as a place for our calm and peaceful diſcuſſion, and though not the ſlighteſt appearance of tumult exiſted, *forcibly* prevent the members from aſſembling.

Gentlemen, if the principle upon which theſe magiſtrates acted be a principle authoriſed by any human code, I ſay that its operation and effect muſt be the abaſement of the human ſpecies, and the extinction of civilized ſociety. It diveſts us of the right of exerciſing our powers of reaſon, and places us in a ſituation beneath the beaſts that periſh. If the magiſtrate of any country makes *ſuppoſed principles* and not *actions* the object of coercion;

if

if upon his own looſe conſtructions and ſpeculations of danger he commits outrage, under pretence of preventing it; if, inſtead of arguing from the conſequence to the principle, he inverts every rule of right reaſon, and infers the conſequence from what he thinks proper to *adjudge* the principle, the ſafety and freedom of human action is at an end. In ſuch caſe the magiſtrate takes upon himſelf to determine that which is undeterminable; to mark as an object of puniſhment not a *preſent* and *actual*, but a future poſſible and contingent conſequence; and by puniſhing *motives* which have not diſplayed their qualities by their effects, to arrogate to his own limited and ſhort-ſighted capacity, a privilege which belongs only to Eternal Omnipotence.

Feeble, indeed, muſt be that civil government which depends for ſupport, upon every trivial occaſion, upon the aid of the military arm. But in the caſe alluded to, we had at leaſt one conſolation; the ſoldiery who interpoſed were not a foreign, but a Britiſh ſoldiery; and I truſt, that however the latter may be for a time deluded, they will recollect, upon all great and trying occaſions, that though neceſſity may have made them ſoldiers, yet ſociety has made them citizens, and nature has made them men. But not only are the principles which I defended pure, but even had they been otherwiſe, the evidence, I affirm, which has been produced in order to fix them upon me, has been incompetent to its avowed purpoſe. Not the ſlighteſt evidence has been afforded, that the convention either publiſhed, or cauſed to be publiſhed by their authority, theſe ſcrolls of paper attributed to them as their minutes. They never authoriſed the publication of any ſpeeches which were made in the convention; nor does it appear by any teſtimony, that the ſpeeches printed in the Gazetteer were identically the ſpeeches delivered in the convention. On the contrary, Roſs, the ſhort-hand writer, ſwears, that he frequently inſerted, from his own mind, words and ſentiments which never fell from the ſpeaker. There is no proof that the motion attributed to Mr. Sinclair, which is the great ground for criminating me, ever paſſed the convention; and even if it had, an attempt to identify that motion with the paper produced, ſhould certainly have preceded its being produced in evidence. Why was this attempt not made? The reaſon is obvious, it muſt of neceſſity have failed. For was it not proved to you, that all Sinclair's papers which were ſeized, were thrown into a looſe bundle, unſealed, toſſed for a conſiderable time about the ſheriff's office, in a ſtate in which it was very eaſy for any perſon to have inſerted other papers not belonging to Mr. Sinclair; conſequently all poſſibility of proving the identity of the papers abſolutely deſtroyed.

With reſpect to the ſpeeches attributed to me, not one witneſs would identify upon oath any one ſingle paſſage which they contain. And even Cockburn, whoſe teſtimony upon that point is the ſtrongeſt, declares, that he has only a general looſe recollection

tion of what paſſed; a ground certainly too ſcanty and inſufficient for the conviction of a man whom the laws of his country *preſume to be innocent*; and which preſumption can never be deſtroyed but by the eſtabliſhment of ſtronger proof. *Stabitur præſumptioni donec probetur in contrarium.* "The preſumption ſtands till the con-"trary is proved." *Co. Litt.*

But the particular circumſtance to which I beg to chain down your attention, is the aſſertion of the public proſecutor, that if you were convinced that my intentions were pure, you were bound in duty to pronounce my acquittal. Yes, Gentlemen, this is the ſolid rock of my defence; the purity of the intention by which I was actuated. Could any thing but an ardent love of truth, and a deſire of promoting the happineſs of my fellow-creatures, have induced me to brave the preſent proſecution, and by diſpelling the miſt of prejudices which darkens their underſtandings, promote the happineſs even of my proſecutors themſelves? In this glorious, though arduous undertaking, by what poſſible motive of gain or ambition could *I* have been actuated? Examples have not been wanting of *men of whom the world was not worthy*, who have fallen victims to an active and zealous virtue; but their fate will never deter firm and well-regulated minds from the performance of that which they will conſider as the moſt ſacred of duties, the fulfilment of their engagements to their oppreſſed and inſulted country. Theſe were the ſentiments which actuated the conduct of our common maſter when he wept over the city, "O Jeruſalem, Jeruſalem! thou that ſtoneſt the "prophets, and ſlayeſt them that are ſent unto thee; how often "would I have gathered ye, even as the hen gathereth the chick-"ens under her wing, but ye would not!"

In every relative ſituation of life, we ſhould do our duty, however hazardous, and leave the conſequences, which *muſt* be ultimately beneficial, to the Supreme Diſpoſer of all human events.

Gentlemen, when you conſider that one great object of the Convention was to promote a more cloſe and ſincere union between England and Scotland, you cannot reaſonably convict as a diſturber of the public peace, any man engaged in ſo laudable an undertaking. Yes, it is our pride and our boaſt that the extinction of thoſe national prejudices which have too long diſturbed and diſgraced both parts of the kingdom, was one great motive of our honeſt exertions. And, ſurely, our time is far better conſumed in ſtrengthening the cement of affection which, as inhabitants of the ſame iſland, it is ſo natural for us to feel, than in waſting and exhauſting ourſelves in the wrangles and contentions of the continent, by which we abandon our local advantages as iſlanders, and ultimately expoſe ourſelves to become the prey of ſome foreign or domeſtic invader. To achieve mighty conqueſts is the lot of few, becauſe few there are, who have either ability or opportunity to obtain them. But to cheriſh and diſſeminate the

principles

principles of peace and good-will towards all men, is certainly the duty of all, becauſe it lies within the power of all, and muſt contribute to the happineſs of all. Moderate talents, ſteady exertion, and good intentions, are fully adequate to this end. This was all to which the members of the Convention made pretence; and they repoſe themſelves with confidence upon the judgement which their country may paſs upon their conduct, whether the powers which they diſplayed, and the means which they adopted, were not well calculated for its attainment.

The Solicitor General, indeed, during the courſe of this trial, has diſtinguiſhed me by a marked and particular compliment; but it was coupled with a charge, that if I am guilty, muſt render me doubly ſo; that my efforts were exerted to diſturb the peace of my country. No, Gentlemen, whatever portion of talents God has thought proper to confer upon me, has never yet been proſtituted to ſo infamous a purpoſe, and I turn with horror from a compliment to my underſtanding, which can only be purchaſed by the extinction of every generous ſentiment of the heart, and the ſacrifice of all things that are ſacred among men.

Gentlemen, when I look forward to the political horizon, the proſpect ſeems awful and gloomy to a degree, at which the beſt men muſt ſhudder, and the ableſt men muſt feel themſelves incompetent to deſcribe. Every thing is turbid and portentous. Indeed, a blacker cloud never hung over this iſland. Thoſe who are verſed in the hiſtory of their country, in the hiſtory of the human race, muſt know, that rigorous ſtate proſecutions have always preceded the æra of convulſion; and this æra, I fear, will be accelerated by the folly and madneſs of our rulers. If the people are diſcontented, the proper mode of quieting their diſcontents is, not by inſtituting rigorous and ſanguinary proſecutions, but by redreſſing their wrongs, and conciliating their affections. Courts of juſtice, indeed, may be called in to the aid of miniſterial vengeance; but if once the purity of their proceedings is ſuſpected, they will ceaſe to be objects of reverence to the nation; they will degenerate into empty and expenſive pageantry, and become the partial inſtruments of vexatious oppreſſion. Whatever may become of me, my principles will laſt for ever. Individuals may periſh, but truth is eternal. The rude blaſts of tyranny may blow from every quarter; but freedom is that hardy plant which will ſurvive the tempeſt, and ſtrike an everlaſting root into the moſt unfavourable ſoil.

Impreſſed with the juſtice of theſe ſentiments, dungeons, fetters, exile, carry no terror to me; for I ſay with the immortal Sydney, that "though I have a particular love to my country, of "which, I hope, that I have given ſome teſtimony; though I "think that being exiled from it is a great evil, from which I "would redeem myſelf with the loſs of a great deal of my blood, "yet, when that country of mine, which uſed to be eſteemed a "paradiſe, is now like to be made a ſtage of injury; the liberty

"which

" which we hoped to eſtabliſh oppreſſed; the beſt of our nation " made a prey to the worſt; the parliament, court, and army " corrupted; the people enſlaved; all things vendible, and no " man ſafe, but by ſuch evil and infamous means as flattery and " bribery; what joy can I have in my own country in this con- " dition? Is it a pleaſure to ſee all that I love in the world ſold " and deſtroyed? Shall I renounce all my old principles, learn " the vile court arts, and make my peace by bribing ſome of the " crew? Shall their corruptions and vice be my ſafety? Ah! " no; better is a life among ſtrangers, than in my own country " upon ſuch conditions. Whilſt I live, I will endeavour to pre- " ſerve my liberty; or, at leaſt, not conſent to the deſtroying of " it. I hope I ſhall die in the ſame principles in which I have " lived, and will live no longer than they can preſerve me. I " have in my life been guilty of many follies, but, as I think, of " no meanneſs. I will not blot and defile that which is paſt, by " endeavouring to provide for the future. I have ever had in " my mind, that ſhould God caſt me into ſuch a condition, as that " I cannot ſave my life, but by doing an indecent thing, he ſhows " me the time is come when I ſhould reſign it; and when I can- " not live in my own country, but by ſuch means as are worſe " than dying in it, I think he ſhows me I ought to keep myſelf " out of it." *See Sydney's Letter.*

Gentlemen, I am in your hands. About my life I feel not the ſlighteſt anxiety; if it would promote the cauſe, I would cheer- fully make the ſacrifice; for if I periſh on an occaſion like the preſent, out of my aſhes will ariſe a flame to conſume the tyrants and oppreſſors of my country.

Moral light is as irreſiſtible by the mind, as phyſical by the eye. All attempts to impede its progreſs are vain. It will roll rapidly along; and as well may tyrants imagine, that by placing their feet upon the earth they can ſtop its diurnal motion, as that they ſhall be able, by efforts the moſt virulent and pertinacious, to extinguiſh the light of reaſon and philoſophy, which, happily for mankind, is every where ſpreading around us.

Surely the experience of all ages ſhould have taught our rulers, that perſecutions never can efface principles; and that the thun- ders of the ſtate will prove impotent, when wielded againſt pa- triotiſm, innocence, and firmneſs. Whether, therefore, I ſhall be permitted to glide gently down the current of life, in the boſom of my native country, among thoſe kindred ſpirits whoſe approbation conſtitutes the great comfort of my being, or whe- ther I be doomed to drag out the remainder of my exiſtence amidſt thieves and murderers, a wandering exile on the bleak and melancholy ſhores of New Holland, my MIND, equal to either fortune, is prepared to meet the deſtiny that awaits me.

" *Seu me tranquilla ſenectus*
" *Expectat, ſeu mors atris circumvolat alis,*
" *Dives, inops, Romae, ſeu forſita juſſerit,* EXUL.

To be torn a bleeding member from that country which we love, is, indeed, upon the firſt view painful in the extreme; but all things ceaſe to be painful, when we are ſupported by the conſciouſneſs that we have done our duty to our fellow creatures; and a wiſe man riſing ſuperior to all local prejudices, if aſked for his country, will turn his eyes from "this dim ſpot which men call "earth,* and will point, like Anaxagoras, to the Heavens."

Gentlemen, my cauſe is in your hands.—You are Britons—You are freemen.—Nothing more therefore is neceſſary to be ſaid. You have heard the charge, you have heard the evidence, and you know the puniſhment which follows upon conviction. Weigh well, then, whether the charge itſelf involves any guilt; whether the evidence produced *affixes* that charge upon me; and above all, whether in caſe of conviction, the puniſhment which I am to ſuffer, is not more than proportionate to the offence.

Before I take my leave of you this night, perhaps for ever, let me remind you, that juſtice is in every ſituation, and in none more than that of a jury, to be adminiſtered in mercy. Upon your ſtrict attention to this grand moral maxim depend your own final doom and unalterable allotment, and to thoſe who refuſe to practiſe it "the throne of mercy will be inacceſſible, and "the Saviour of the world will have been born in vain." *Rambler.*

* Milton.

Parallel

Parallel Paſſages between the Speeches of Lord Chief Juſtice JEFFRIES, *in the Caſe of* ALGERNON SYDNEY, *and of the Judges of the High Court of Juſticiary, particularly of the Lord Juſtice* CLERK, *on the Trial of* JOSEPH GERRALD.

Lord Advocate. The priſoner has received that *indulgence* which calumny itſelf cannot reach. *Trial of Joſeph Gerrald*, p. 8.

Lord Juſtice Clerk. Now I am ſure you muſt be conſcious that you have had all kinds of *indulgence*. Ib. p 10.

Lord Juſtice Clerk. All that you have been ſaying is ſedition. Ib. p. 205.

Lord Dunſinnan. I think your Lordſhips ought to pay no attention to his objection, either in one ſhape or other. Ib. p. 15.

Lord Juſtice Clerk. Every man's life and liberty is ſecured by the *laws* of the country. Ib. p. 235.

Lord Juſtice Clerk. (After having interrupted the priſoner.)—Go on in your own way. Ib. p. 205.

Lord Swinton. "The great "art of government," ſays the pannel, "is this, that "all ſhould be governed by "all;" that is to ſay, that the whole of the ſuffragants, the whole voters, ſhall be governed by the whole voters. What is this but ſaying, that the *multitude* ſhall be

Lord Chief Juſtice Jeffries. We muſt tell you, we ought not (perhaps in ſtrictneſs) to have given you ſo much favour as we did. And becauſe you did particularly take notice of the caſe of Sir Henry Vane, I will ſhow you the court did indulge more to you than was done to that perſon. *Hargrave's edition of State Trials*, vol. 3, 4, p. 797.

Lord C. Juſtice Jeffries. There is not a line in your book ſcarce but what is *treaſon*. Ib. p. 820.

Lord C. Juſtice Jeffries. If you make objections that are immaterial, we muſt overrule them. Ib. p. 820.

Lord C. Juſtice Jeffries. God be thanked we are governed by law. Ib. p. 808.

Lord C. Juſtice Jeffries. Take your own method, Mr. Sydney. Ib. p. 808.

Lord C. Juſtice Jeffries. There ſhall be no ſuch thing as government, if the *people* ſhall be judge in the caſe. For what ſo uncertain as the heady and giddy multitude. Ib. p. 816.

be governed by the *multitude?* Who would be chose a judge by such governors! Ib. p. 114.

Lord Justice Clerk. If there is nothing to substantiate the charge, you will find the pannel not guilty. *(To the jury.)* Ib. p. 234.

Lord Justice Clerk. I feel for the distresses of convicts as much as any man who hears me. Ib. p. 250.

Lord Justice Clerk. I don't see that the pannel can be supposed to know the laws of this country. I am, for my own part, for giving him counsel. Ib. p. 8.

Lord Justice Clerk. Taking his own account of the matter to be just; supposing that he has acted from principle, and that his motives are pure, I do say that he becomes a more dangerous member of society *than if his conduct was really criminal*, and acting from criminal motives. A man acting from *criminal motives* is not so dangerous a member of society as a man who thinks he is acting from *principle*. Ib. p. 251.

Lord C. Justice Jeffries. If you be not guilty, I pray God you may escape. *(To the prisoner.)* Ib. p. 796.—Even Jeffries *affected* humanity.

Lord C. Justice Jeffries. I should be very loth to draw the guilt of any man's blood upon me. Ib. p. 796.

Lord C. Justice Jeffries. Those things that you may have by law, God forbid but you should have the benefit of them. Ib. p. 796.

Lord C. Justice Jeffries. Some men may by *passion* be transported into such an offence, and though the offence be never the less, *whatever the motives are*, yet in some it is less dangerous. But this gentleman proceeds upon a surer foundation, it is his reason, *it is his principle*, that is the guide of all his actions. This is the more dangerous conspiracy in this man, by how much the more it is rooted in him; and how deep it is you hear, when a man shall write as his principle, &c. It will be a very sad case *when people act this according to their consciences*, and do all this for the good of the people, as they would have it thought; but this is the *principle* of this man. Ib. p. 816.

FINIS.

E. G. M. B.